

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 9	)	MD Docket No. 94-19
of the Communications Act	)	
	)	
Assessment and Collection of	)	
Regulatory Fees for the 1994	)	
Fiscal Year	)	

REPORT AND ORDER

Adopted: June 3, 1994;

Released: June 8, 1944

By the Commission: Commissioner Quello issuing a statement;
 Commissioners Ness and Chong not participating.

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I. Introduction

1. By this Report and Order, the Commission adopts rules to implement section 9 of the Communications Act, as amended, 47 U.S.C. § 159, providing for the annual assessment and collection of regulatory fees by the Commission.¹ The Report and Order establishes the amounts of the regulatory fees for Fiscal Year (FY) 1994 and the rules for the payment of such fees for fiscal years 1994 and thereafter.² Also, we are amending several of the rules governing the collection of the fees to be filed with applications and other filings pursuant to section 8 of the

¹ Section 9 of the Act was added by section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter "1993 Budget Act"). See Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397 (approved August 10, 1993). Section 9 is codified at 47 U.S.C. § 159.

² As discussed below, we will establish the accounting systems necessary to make adjustments in the Schedule of Regulatory Fees required for the assessment of fees in future years in a subsequent and separate rulemaking proceeding. See 47 U.S.C. § 159(b)(3), (i).

Communications Act, as amended, 47 U.S.C. § 158.³

2. The rules we adopt below are designed to ensure that 1) collection of fees does not adversely affect the Commission's regulatory activities, 2) the most effective means possible are employed in the collection and deposit of fees, and 3) the paperwork (and financial burden) on the public resulting from our collection process is kept to an absolute minimum. To accomplish this goal, we have, to the extent possible, modeled our regulatory fee rules upon the rules that we previously established to govern the collection of fees filed with applications and other filings. See 47 C.F.R. § 1.1101 et seq. Moreover, in the course of fashioning rules to govern regulatory fees, we have revised several rules in order to improve the collection process related to these fees and, wherever possible, to ease the burden on those entities subject to the payment of these fees. Implementation of rules governing the collection of regulatory fees also furthers the National Performance Review goals of reinventing government by requiring beneficiaries of the Commission's services to pay the costs associated with these activities.

II. Background

3. Section 9(a) of the Communications Act requires the Commission to collect regulatory fees to recover the annual cost of its enforcement activities, policy and rulemaking activities, user information services, and international activities. 47 U.S.C. § 159(a). 47 U.S.C. § 159(b)(1)(A). The Schedule of Regulatory Charges sets forth in section 9(g) the categories of regulated entities subject initially to the regulatory fee requirement and designates the fees to be collected for each subject category of regulatee. 47 U.S.C. § 159(g). The Schedule of Fees sets forth annual regulatory fees for specific categories of regulatees in Private Radio, Mass Media, Common Carrier and

³ 47 U.S.C. § 158. See generally 47 C.F.R. Part 1, Subpart G; Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987) (hereinafter "Fees I"), recon. granted in part, 3 FCC Rcd 5987 (1988) (hereinafter "Fees I Reconsideration"); Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558 (1990) (hereinafter "Fees II"), recon. granted in part, 6 FCC Rcd 5919 (1991) (hereinafter "Fees II Reconsideration"). See also section 6003(a)(2) of the 1993 Budget Act, Pub. L. 103-66, Title VI, § 6003(a)(2), 107 Stat. 401 (1993) (making conforming amendments to section 8).

Cable Services.⁴

4. Section 9(f)(1) requires the Commission to adopt rules to implement the assessment and collection of the annual regulatory fees. 47 U.S.C. § 159(f)(1). On March 4, 1994, we adopted a Notice of Proposed Rulemaking ("NPRM") to implement section 9 of the Act.⁵ In the NPRM, we concluded that Congress intended the Commission to rely upon the Schedule of Regulatory Fees enacted in section 9(g) to recover costs for FY 1994.

5. In addition, the NPRM proposed rules providing for: 1) exemptions from the regulatory fee requirements for governmental entities, nonprofit entities, amateur licensees, noncommercial educational broadcasters, and licensees in the public safety services, 2) standards for waiver, reduction and deferment of regulatory fees, 3) procedures for the payment of regulatory fees, including the timing and method of payments, and the location for submission of payments, and 4) procedures to assure timely payment of regulatory fees, including announcements in the Federal Register of the filing times for the fee payments, and penalties for late payment and nonpayment of fees.

III. Discussion

A. Assessment of Regulatory Fees for FY 1994

6. The NPRM proposed that for FY 1994, the Commission would utilize the Schedule of Regulatory Fees established by Congress in section 9(g) of the Act. 47 U.S.C. § 159(g). In response to this proposal, several commenters suggest that we amend the Schedule of Fees for FY 1994. They contend that fees in the Schedule are too high, that the schedule provides the wrong mechanism for assessing fees, and that additional services should be included in the fee schedule.

⁴ Congress included the regulatory fees for cable services in the Schedule of Regulatory Fees as a subpart of the fees established to recover appropriations related to the regulation of mass media services. 47 U.S.C. § 159(g). Because we recently established a Cable Services Bureau to administer the regulation of cable television operations, we have amended our rules to set forth separately the regulatory fees applicable to cable services. See section 1.1155, 47 C.F.R. § 1.1155.

⁵ See Notice of Proposed Rulemaking in the Implementation of Section 9 of the Communication Act, FCC 94-46, released March 11, 1994.

7. In particular, Fireweed Communications Corp.⁶ (Fireweed) argues that the regulatory fees impose an unfair and confiscatory financial burden on broadcast stations in small markets, and impinge on the constitutional right of freedom of speech of Fireweed and its listeners. Fireweed contends that the financial burden imposed by the regulatory fee would cause it to reduce its programming or even to cease its operations. The Joint Commenters, consisting of several cable television interests,⁷ argue that we have authority to modify the Fee Schedule for FY 1994, to add classes of services that Congress did not include in section 9(g)'s fee schedule. In addition, the Joint Commenters assert that the Commission is authorized to modify the fee schedule for FY 1994 because section 9(b)(3), which governs permissive adjustments to the fee schedule, including addition of services to the schedule, does not restrict our authority for making changes to fiscal years after 1994. In particular, the Joint Commenters contend that Direct Broadcast Satellite, if available later this fiscal year, Instructional Television Fixed Service, if used for commercial purposes, and Multi-channel Multipoint Distribution Services, because it is not expressly enumerated as a service subject to the fee requirement, should be added to the fee schedule and assessed a fee for FY 1994. The Joint Commenters also assert that adopting a fee requirement for these services in this proceeding will avoid the necessity for immediately initiating a new rulemaking to include these services

⁶ Fireweed filed its comments late. It argues that the Commission failed to provide proper notice to interested parties and asserts that we failed to publish the NPRM "in publications likely to be obtained by small entities" or to "conduct open conferences and public meetings" concerning our proposals as provided in 5 U.S.C. § 609(2) and (4). However, section 609 requires only that we "assure that small entities have been given an opportunity to participate in the rulemaking" through means "such as" those enumerated in section 609. 5 U.S.C. § 609. We have met that requirement. The NPRM was published and distributed pursuant to section 1.412 of our rules and was distributed to over 100 members of the trade press, newspapers, wire services, broadcasters, and magazines, including those dealing with consumer, minority and small business issues. In addition, the Commission's Daily Digest, which included notice of the NPRM, was published on Internet. We will also accept and give full consideration to the arguments in Fireweed's comments even though they were untimely filed. Further, we will accept the late filed comments of MCI Telecommunications Corporation.

⁷ The Joint Commenters are Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multivision Cable TV Corp., Parcable, Inc., Providence Journal Company, Sammons Communications, Inc., and Star Cable Associates.

in the fee schedule for FY 1995 and thereafter.

8. Other parties including Sprint, the Cellular Telephone Industry Association (CTIA), Comsat, and the Utilities Telecommunications Counsel (UTC), support our conclusion in the NPRM that Congress intended that the Schedule set forth in section 9(g) would govern the assessment and collection of fees for FY 1994. UTC states that Congress' inclusion in section 9(g) of the fee schedule, as well as other language in the Act, clearly demonstrates that Congress did not intend that the Commission revise the fee schedule so soon after its enactment.

9. We are not persuaded by the arguments urging a reduction in the statutory fees or amendment of the service categories subject to the regulatory fees. In the NPRM, we concluded that Congress did not intend that we change the amounts or the services established by the statutory fee schedule for 1994. Our conclusion is supported by the Conference Report, which states that we have authority to review and adjust the fees after one year.⁸ Congress also enacted the fee schedule after reviewing information that we provided concerning the services subject to the fees. We do not believe that Congress would have enacted section 9(g) intending that we immediately amend the service classifications or fee amounts in its schedule.

10. In addition, other provisions of section 9 support our interpretation. Section 9(i) requires that, before making adjustments to the services included in the fee schedule, we must develop accounting systems and provide an opportunity for public comments on proposed cost allocations. NPRM para. 9. Section 9(b)(4)(B) requires that any amendment to the services contained in the statutory fee schedule not be effective until 90 days after Congress is notified of those revisions. See 47 U.S.C. § 159. As a practical matter, the Commission could not possibly meet these requirements in time to permit section 9 fee collections in FY 1994. Given these statutory requirements, we conclude that Congress did not intend that we make any changes to the services subjected to the regulatory fee requirement or the amounts contained in the schedule for FY 94.⁹

11. Also, we do not agree with the Joint Commenters that this is the appropriate proceeding to amend the Schedule of Fees for

⁸ H.R. Rep. No. 213, 103 Cong., 1st Sess. 499 (1993) (Conference Report).

⁹In view of our conclusion that Congress did not intend us to make any changes to its Schedule of Fees for FY 1994, we will not at this time assess fees on lifetime restricted radiotelephone and radio operator applicants and permittees.

future years. Such amendments would be premature because we do not now have the information necessary to establish regulatory fees for FY 1995. As we stated in the NPRM, we intend to commence a separate proceeding in connection with the assessment of fees for FY 1995. We will seek in that proceeding comment concerning the allocation of costs of our enforcement, policy and rulemaking, information services, and international services, including any necessary adjustments to the classes of services set forth in section 9(g)'s fee schedule. See 47 U.S.C. ¶ 159(i).

12. Therefore, as we proposed in the NPRM, in order to meet the congressional directive to implement the collection of regulatory fees in Fiscal Year 1994, we are adopting without modification the Schedule of Regulatory Fees enacted by Congress in section 9(g). See 47 U.S.C. § 159(b)(1)(C). The Schedule provides a listing of the specific categories of regulatees in the Private Radio, Mass Media, Common Carrier and Cable Services that are required to pay a regulatory fee. We have incorporated the schedule into our rules and we have established separate sections of the rules to provide the payment schedules for the Private Radio Services (section 1.1152), Mass Media Services (section 1.1153), Common Carrier Services (1.1154) and Cable Services (section 1.1155). In Appendix B of this Report and Order, we have included guidelines for the payment of fees for each service subject to the regulatory fee requirement.

B. Exemptions from Regulatory Fees

13. In the NPRM, we proposed to exempt certain discrete categories of regulatees from the requirement to file annual regulatory fees. Section 9(h) explicitly provides an exemption from the fees for governmental entities, nonprofit entities and amateur radio licensees. 47 U.S.C. § 159(h). We concluded that Congress also intended to exempt all public safety licensees and noncommercial educational broadcasters from the regulatory fee requirements. In the paragraphs below, we review each of these categories and consider the comments that address each exemption.

1. Governmental Entities

14. As provided in section 9(h) and proposed in the NPRM, governmental entities will be exempt from the regulatory fee requirement. As proposed, our rule implementing the governmental exemption will conform to existing section 1.1112(f) of the rules, which provides an exemption for governmental entities from the fee requirements for applications and other filing fees. See 47 C.F.R. § 1.1112(f); see also 47 U.S.C. § 158(d)(1)(A), (B). Section 1.1112(f) broadly defines the term "governmental entity" to include "any state, possession, city, county, town, village, municipal corporation or similar political organization or

subpart controlled by publicly elected officials exercising sovereign direction and control over their respective communities or programs." The comments generally support our proposals with regard to the exemption for governmental entities.

15. Cellular Communications of Puerto Rico (CCPR) contends that we should limit the government exemption so that only usual and customary governmental functions would be exempt. In particular, CCPR argues that the Puerto Rico Telephone Company (PRTC) which is controlled by the Commonwealth of Puerto Rico and operates a cellular telephone system, should be required to pay a regulatory fee to the extent that it engages in for profit or competitive operations. Further, CCPR argues that exempting PRTC from the regulatory fees for cellular telephone systems would give PRTC an unfair competitive advantage. In opposition, PRTC argues that Congress did not distinguish between different activities, and that as a result all of its operations are subject to the governmental exemption.

16. The governmental exemption is mandated by Congress. Congress did not distinguish between various governmental functions, nor did it restrict the exemption's availability for any specific governmental entities. Therefore, we do not accept CCPR's proposal.

2. Nonprofit Entities

17. Section 9(h) also exempts nonprofit entities from the requirement to file regulatory fees. In the NPRM, we tentatively found that Congress intended its exemption for nonprofit entities to cover any entity possessing nonprofit, tax exempt status pursuant to section 501 of the Internal Revenue Code, 26 U.S.C. § 501. Congress' exemption of nonprofit entities from regulatory fees is substantially broader than the limited exemption from the payment of application filing fees that Congress afforded in section 8(d)(1) to nonprofit entities licensed in the Public Safety Radio Services and tax exempt under section 501(c)(3). See 47 U.S.C. § 158(d)(1); see also 47 C.F.R. § 1.1112(b). The comments generally support our interpretation of the exemption, and we will adopt the exemption as proposed in the NPRM. The nonprofit exemption will be available only to those licensees who have established their nonprofit status under section 501.

3. Amateur Licensees

18. Pursuant to section 9(h), we proposed to establish an exemption from regulatory fees for amateur radio operators licensed under part 97 of our rules. However, Congress included in the Schedule of Fees an annual regulatory fee covering vanity call signs, and we proposed to establish a fee for amateur vanity call signs. We proposed that this fee would be assessed if our proposed rules to establish vanity call signs become effective.

See Notice of Proposed Rulemaking, 9 FCC Rd 105 (1993).

19. We will adopt the exemption for amateur licensees as set forth in NPRM. If our proposal to issue vanity call signs is adopted, we will also assess a regulatory fee in FY 1994 upon persons filing applications, pursuant to the charges listed in Congress' fee schedule.¹⁰

4. Noncommercial Educational Broadcasters

20. In the NPRM, we concluded that regulatory fees are not applicable to noncommercial educational broadcasters. Congress included commercial television and AM and FM radio broadcast licensees and permittees in its Schedule of Fees. In contrast, Congress omitted the noncommercial educational stations from the category of stations subject to the regulatory fee. In addition, and consistent with existing section 1.1112(d) of the rules governing application fees, we proposed to exempt from the regulatory fee requirement any secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations and other Mass Media, Common Carrier, and Private Radio facility authorizations used with noncommercial radio, television and instructional services qualifying for the exemption. See 47 C.F.R. § 1.1112(d). The comments supported the exemption for nonprofit educational broadcast stations and we will adopt the exemption as set forth in the NPRM.

21. Further, we affirm the tentative conclusion of the NPRM that noncommercial international short-wave will be subject to the regulatory fees. Congress did not provide an express exemption for these stations and none of the commenters urged us to exempt the international short-wave stations. In addition, unlike noncommercial LPTV and translator stations, the government does not provide financial support to noncommercial international short wave stations through the Corporation for Public Broadcasting (CPB) or the National Telecommunications and Information Administration (NTIA). Thus, the considerations that led us to conclude that Congress intended to exempt noncommercial educational LPTV and translator stations are not present with respect to international short-wave stations. See Fee Collection Program, 6 FCC Rcd 5919, 5925 (1991).

5. Public Safety Services

¹⁰ The American Radio Relay League, Incorporated asserts that it has requested Congress to change the vanity call sign annual regulatory fee to a one time application fee. We, of course, will modify our fee schedule to be consistent with any congressional amendment of the fees.

22. We have received no comments opposing our proposal to exempt all licensees in the Special Emergency Radio and Public Safety Radio services from regulatory fees even where the licensee does not qualify for an exemption as a governmental or nonprofit entity. In the NPRM, we noted that the legislative history states that Congress intended to exempt public safety licensees from regulatory fees. APCO, in supporting our proposal, urges that we limit the public safety exemption to entities eligible for Public Safety Radio Service licenses pursuant to the provisions of Part 90, Subpart B, and not exempt licensees merely because they are authorized to operate on a public safety channel. We agree with APCO that only entities eligible to operate as public safety licensees should be entitled to an exemption. Therefore, we will restrict the public safety exemption to entities eligible to operate in the Special Emergency Radio or Public Safety Radio Services.¹¹ Under this definition, the fact that a licensee is authorized to use a frequency allocated to these services is insufficient to gain an exemption as a public safety entity.

6. Certification of Exempt Status

23. In order to implement our congressional mandate concerning exemptions, the NPRM asked the parties to comment on the appropriate method for establishing exemptions from regulatory fees. Our goal is to minimize the burden on applicants and licensees seeking exemption from the regulatory fees. See NPRM at ¶¶ 13, 16, and 21. The commenters supported our efforts and urged reporting and exemption certifications designed to minimize their paperwork burdens.

24. Forest Industries Telecommunications (FIT) proposed that the Commission allow nonprofit entities to establish their exempt status by submitting a Determination Letter issued by the Internal Revenue Service (IRS) stating that the applicant has qualified for tax exempt status under Section 501 of the Internal Revenue Act. The Utilities Telecommunications Council (UTC) urges that we reduce the burden on entities seeking to obtain a nonprofit exemption by requiring only that they file their employer identification numbers (EINs). UCC asserts that EINs are sufficient to permit verification of an entity's nonprofit status. The National Telephone Cooperative Association (NTCA) urges that we also exempt entities that have applied for IRS Determination Letters so that IRS administrative delays do not

¹¹ Moreover, we will not assess a regulatory fee upon Emergency Broadcast Service (EBS) licenses for auxiliary service facilities that use government-provided equipment because these stations are dedicated for EBS and are used solely for public safety purposes.

result in the denial of exemption from the regulatory fee requirement. NTCA requests that our determination of nonprofit status remain effective until a change in such status is determined by the IRS.

25. PRTC urges us to rely upon existing exemptions from application fee payments held by governmental entities rather than require these entities to provide additional certifications to obtain exemptions from the regulatory fee requirement. Similarly, UCC contends that no additional certification of exempt status should be required from governmental applicants in the Private Radio services since applications for these services require information disclosing their exempt status.

26. We agree with PRTC and UCC that we can rely on the data in private radio service applications and in the Commission's files to determine a regulatee's exempt status. Further, licensees and other regulatees for whom we have such data will not be required to file documentation to support their exempt status. If, after reviewing the information already on file, we are unable to determine a regulatee's exempt status we will issue a request that an applicant or licensee further document its claim of exempt status. With respect to amateur, noncommercial educational broadcast stations and public safety licensees, we do not anticipate any problem in establishing their eligibility for exempt status because their exempt status is based on the nature of their licenses.

27. When our records contain no evidence of a governmental entity's exempt status, we will accept a certification of its governmental status. Nonprofit licensees may submit section 501 Determination Letters. Because these documents are readily available in the files of nonprofit entities, we decline at this time to establish a mechanism to verify nonprofit status through EINs. We will also require that an entity with a pending request for an IRS Determination Letter submit a regulatory fee because the IRS may deny the request for tax exempt status. However, we will refund the fee for the period covered by a subsequently issued Determination Letter.¹²

28. We caution that we expect regulatees to act in good faith.

¹²To obtain a refund a regulatee must demonstrate that the period covered by the Determination Letter's finding of tax exempt status includes the date that we established for the calculation of its fee in the fiscal year for which the refund is requested. Further, an entity will be subject to a regulatory fee for the fiscal year that the IRS terminates its tax exempt status if the termination is made prior to the date for calculating its fees.

In any instance in which payment is overdue, and the licensee or permittee cannot establish its entitlement to an exemption, we will assess a 25 percent penalty for late payment as authorized by Congress.

C. Waivers, Reductions and Deferments of Regulatory Fees

29. Section 9(d) provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d). Section 9(d) is similar to, if not identical with section 8(d)(2) of the Act related to waivers and deferments of application fees. 47 U.S.C. § 158(d)(2). Pursuant to section 8(d)(2), we have permitted waivers only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester. Thus, in our NPRM, we proposed to restrict similarly waivers to encompass only those requests unambiguously articulating "extraordinary and compelling circumstances" outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.

30. For those entities required to file regulatory fees with their applications, such as licensees in the private radio service, we proposed procedures for filing waiver, deferral and reduction requests similar to those we have fashioned for application fee waiver requests. See 47 C.F.R. 1.1115(e). Persons seeking waiver or reduction of a regulatory fee would submit the required fees and forms along with their requests for waiver or reduction. We noted that this procedure assures efficient collection of necessary fees and avoids the possible imposition of a late fee in the event that the licensee's request for waiver or reduction is denied. In the case of standard regulatory fees, we further proposed that the required fee accompany any request for waiver or reduction. In either case, we proposed to return or modify the tendered fee upon grant of the waiver or reduction request. Finally, we proposed that a request for deferred payment of the required fee should be submitted 60 days in advance of the date established for the payment of the fee in order to permit review and action prior to the fee's due date.

31. Several state broadcasting associations (State Broadcasters) in their joint comments, suggest that the public interest would be served by granting permanent or temporary waivers or reduction or deferment of fees to Mass Media licensees who can demonstrate that payment of the fees would impair their service to the public. The State Broadcasters contend that our authority to waive, reduce or defer fee payments in such cases is clear if a showing is made that payment of the fee could result in degradation of service to the public, citing NBC v. United States, 319 U.S. 190 (1943); FCC v. Sanders Bros. Radio Station,

309 U.S. 470 (1940). In order to demonstrate financial hardship, the State Broadcasters urge that they be allowed to submit any relevant evidence, including tax records, unaudited balance sheets or any other financial statements. Further, the State Broadcasters argue that the fee should be automatically waived if a Mass Media licensee is in bankruptcy, receivership or trusteeship because this status is a clear signal of financial hardship.

32. The Broadcasters, joined by the National Association of Broadcasters (NAB), contend further that the requirement to file the regulatory fee payment with a request for waiver is irrational where the basis for the waiver request is the financial hardship of the licensee. Further, the NAB states that it will be impossible to dispose of waiver requests before the fee payments are due for FY 1994 because of the short period between the completion of this proceeding and the date for submission of fees. Moreover, the NAB stresses that Congress contemplated that there would be situations where the financial burden imposed by the fee requirement would be so onerous that payment should be waived. According to the NAB, if Congress' purpose in providing for waiver, reduction or deferment is to have any practical effect, according to NAB, we should not require applicants requesting waivers for financial hardship to suffer additional financial burden that they cannot afford.

33. We are not persuaded that we should modify our proposal to generally require the filing of the regulatory fee with each waiver or reduction request. Rather, we continue to believe that our current procedure will help ensure efficient collections.

34. Nevertheless, we recognize that there may be exceptional instances in which requiring payment of the regulatory fee along with a waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee or other regulatee. In those instances, the licensee should submit, together with its waiver request, a petition to defer payment until the waiver request is resolved. In order to reduce the burden on regulatees, we will accept petitions for waiver, reduction and deferment so long as they are filed no later than by the date payment is due. The filing of the deferment request will toll the requirement to pay the regulatory fee until disposition of the deferment request.¹³

¹³ We deny NABER's request that we modify the fee that Congress required for filing a petition for waiver of a private radio service rule. Section 8 of the Communications Act empowers us only to adjust fees for applications and other filings based upon changes in the Consumer Price Index.

35. Petitioners seeking a waiver, deferral or reduction of a regulatory fee based upon financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon the information submitted and any additional information available in our records. If a petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will then have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

D. Procedures for Payment of Regulatory Fees

1. Categories of Payors

36. Pursuant to section 9(f), we proposed to establish three classes of regulatory fee payments, standard, small and large, based upon the size of the payment required by the Schedule. The time for submitting the fee would be determined by the class of fee payment. Persons making "large" fee payments for Fiscal Year 1994 would be eligible to complete their fee payment in two installments. Moreover, we stated that consideration would be given to allowing four installment payments for Fiscal Year 1995 and thereafter. We proposed, however, that small fee payments, be remitted when an application for a license of a facility subject to the fee is filed and the payment amount is the fee due for the entire term of the license or other authorization. We proposed that regulatees subject to a standard fee are to submit the fee in a single, annual payment. The specific date for the payment of a standard fee would be announced by public notice and published in the Federal Register well before the payment's due date.¹⁴

37. Brown and Schwaninger (B&S) states that Congress intended to establish only two, not three, categories of regulatory fees -

¹⁴ GTE has urged that we allow licensees that transfer or assign licenses during FY 1994 to pro-rate their fee payments for the subject licenses on the basis of the amount of time the license was held by each party. The law authorizing section 9 was enacted in August 1993 and we believe that the negotiation between the parties to a transfer or assignment that occurred this fiscal year would ordinarily have included consideration of expenses related to the payment of regulatory fees. The party holding the license on the date the fees are due will be the party responsible for its payment.

large fees and small fees - because section 9(f) enumerates only two such categories of fee payments. B&S contends that Congress would have included in section 9 explicit authority to establish a third category if it had intended to provide such authority. In the absence of any language in section 9 indicative of a third category, B&S contend that we are precluded from adopting a standard fee category and collecting standard fees. Instead, B&S reasons that our authority under section 9 is limited to determining that a particular fee is either large, and establishing an installment plan, or the fee is small and collecting it in advance for a number of years not to exceed the term of the license.

38. We reject B&S's interpretation of section 9(f). In section 9(a), the general authority provision, Congress broadly empowered us "to assess and collect regulatory fees...." Subsection 9(f) requires only that our rules include specific provisions providing for advance payments in the case of small fees and installment payments for larger ones. Nothing in that section, or in logic, compels a conclusion that every fee must necessarily fall within a category of either "large" or "small." Section 9(f) is simply silent regarding any other substantive aspect of our fee collection system, including whether other categories of fee payments may be established. Moreover, our conclusion that some regulatees are subject to payment of neither large nor small fees and, consequently, are only subject to a single annual regulatory "standard" fee payment, in no way conflicts with Congress' directive to include specific consideration of those payors of large and small fees. Therefore, we adopt our proposal to establish three categories of regulatory fees.

2. Installment Payments for Large Fees

39. In the NPRM, we proposed that some fees would be classified as "large" fees and, therefore, eligible for payment by installment. For FY 1994, we identified the following fee amounts in the specified categories as eligible for payment on the installment plan.

<u>Regulatory Fee Category</u>	<u>Large Fee</u>
VHF and UHF Commercial Television Station	above \$12,000
Cable Television System	above \$18,500
Inter-Exchange Carrier	above \$500,000
Local Exchange Carrier	above \$700,000

40. Several parties urge that we expand significantly our proposed installment payment eligibility standards. GTE and Sprint request that we establish an installment fee benchmark of \$250,000 for all classes of services that are not allowed to make installment payments under our proposal. The Broadcasting

Associations argues that all mass media licensees should be eligible for installment payments and the New Jersey Broadcasting Association (New Jersey Association) argues that all radio broadcasting licensees, or in the alternative, licensees encountering financial hardship should be permitted to make installment payments. GE American Communications, Inc. contends that licensees of satellite space stations should be afforded installment payment eligibility.

41. For FY 1994, we intend to permit installment payments by a reasonable number of regulatees whose fees greatly exceed the average fee in a particular service category. Through this means we can ensure that we are able to structure a fee collection system that can be fairly and efficiently administered, given our available resources and our relative inexperience with the regulatory fee program and its installment component.¹⁵

42. Since little time is left in which to collect fees for FY 1994, the practical impact of permitting licensees to make installment payments this year should be minimal in any event. In these circumstances, we thus find it both fair and prudent to decline to expand significantly installment payment eligibility for FY 1994. Also, we decline to permit installment payments for radio licensees, since no fee greater than \$900.00 is imposed on these licensees.

43. As we gain experience with the regulatory fee program and, in particular, with its installment payment component, we will consider increasing eligibility to make installment payments. Therefore, with a limited exception, we will adopt our proposed installment fee standards. As discussed above, if a licensee concludes that payment of a fee in its entirety would constitute a financial hardship or if it cannot otherwise submit a full payment, the licensee may submit a partial payment of the fee with a petition to defer payment of the remaining portion of the fee. Interested parties may renew their arguments for increased installment opportunities in their comments concerning the assessment and collection of regulatory fees for 1995.

44. Notwithstanding our decision not to expand significantly installment payment eligibility this year, we have decided to permit space station and system licensees to submit their fees in installments. These licensees are relatively few in number, and the uniform fee structure for this service does not lend itself to the mechanism we used to establish installment payments in

¹⁵ Because our fee collection program is not yet capable of accounting for installment payments aggregated on other than a single service basis, regulatees must pay their fee payments on a service by service basis.

categories of services with progressive fee structures. Thus, we will permit licensees of geosynchronous satellite space stations and low earth orbit satellite systems to file their fee payments in installments.

45. As proposed, regulatees qualifying for installment payments for FY 1994 may make their fee payments in two separate and equally divided payments with the first payment due on the date set for paying standard annual fees. The date for each installment will be announced by Public Notice and in the Federal Register. For future fiscal years, we plan to permit four installments annually. We have decided not to impose an administrative fee with each installment payment. However, any late filed installment payment will be subject to a 25 percent late fee and the payment of interest for the delinquent amount. Further, any regulatee paying its fees by installment will automatically lose its eligibility to pay by installments if it fails to make any of its payments in a timely fashion.

3. Advance Payments

46. FIT and UTC support our proposal to require that regulatory fee payments in the Private Radio services be made in advance. We will require that full payment for Private Radio service regulatory fees due over the entire term of the authorization be submitted at the time an applicant in the Private Radio service submits its new, renewal or reinstatement application.¹⁶ For example, regulatees in the private, shared use services would submit a one time regulatory fee of \$35.00 per license to cover the entire five-year term of their license or authorization. Moreover, until expiration of that authorization, we will not subject regulatees submitting advance fee payments to submit another (supplementary) fee payment for the same authorization until expiration of that authorization, notwithstanding any subsequent increase in the applicable annual fee. In instances in which a license is transferred to another service and, therefore, becomes subject to a different annual fee, as in the case of Private Radio licensees as they become Commercial Mobile Radio Service licensees, we have generally decided to apply any advance payment to the new annual fee requirement resulting from that reclassification. Thus, the licensee would become subject to payment of the difference between its initial fee payment and the amount required under the fee schedule for its new service.

47. For FY 1994, no Mass Media or Common Carrier regulatory fees

¹⁶ Regulatory fee payments submitted with applications that are subsequently dismissed or denied will be returned upon request.

will be subject to collection as small fees. However, in future years, we may decide to collect advance payments of fees in these services in the event that we conclude that the fee required is small and our experience shows that it is inefficient to collect the fee on an annual basis.

4. Timing Of Payment

48. As noted, the date for payment of standard fees will be announced by public notice and published in the Federal Register. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1993. We have selected October 1 as the date for calculating these fees since October 1 is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities since the beginning of the period covered by their payment.¹⁷

49. In the case of regulatees whose fee payments are based upon a subscriber, line or circuit count, we have decided that the number of a regulatee's subscribers, lines or circuits on December 31, 1993 will be used to calculate the fee. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of the last day of the calendar year for internal purposes. Therefore, calculation of the subscriber fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted. Cable systems should calculate their FY 1994 regulatory fees using the subscriber data that was provided to the Commission for the 1993 Annual Report of Cable Television Systems (FCC Form 325A) submission. Accordingly, the number of subscribers will not necessarily be based on December 31, 1993, but rather on "a typical day in the last full week of December 1993." (See FCC Form 325 Instructions at page 1). Finally, since entities in the Private Radio services pay their fees when applying for an new, renewal or reinstatement license, we will require Private Radio applicants to submit a regulatory fee with new, renewal and reinstatement applications filed following the effective date of these rules.

5. Method and Location of Payment

¹⁷ In light of this decision, the comments by Orbital Communications Corporation, GE American Communications, Inc. and Starsys Global Positioning, Inc. concerning appropriate payments for satellites that became operational after commencement of the fiscal year are moot.

50. We proposed to adopt generally the same methods of payment for regulatory fees as we established for application fees. See 47 C.F.R. S 1.1108(a). In addition, we proposed to establish a process to permit the electronic filing of fee payments, initially on an experimental basis. Further, we proposed to permit payment of fees by credit card (VISA and Mastercard) in some circumstances subject to the requirement that, when a credit card payment is made, the entire fee payment must be made in a single credit card transaction.

51. Several parties have requested clarification of our requirements for multiple fee payments by Private Radio licensees.¹⁸ Other parties support our proposals concerning payment methods, particularly our decision to accept credit cards and electronic payments.¹⁹

52. We have designed FCC Forms 159 (Remittance Advice) and 159-C (Continuation sheet) to replace Form 155. We are satisfied that the forms, and our rules, provide sufficient clarification of our requirements concerning multiple fee payments. These forms are to be submitted with any regulatory fee payment in the mass media, common carrier and cable services. Payors, in the Private Radio services making a single regulatory fee payment, other than by electronic means or credit card, are not required to file a Form 159 as long as their accompanying application form provides the information necessary to accomplish the payment.

6. Multiple Payments

53. Generally, we will permit any entity, including licensees in the private radio services, to make multiple section 9 regulatory (and section 8 application) fee payments within the same lockbox, including, where applicable, installment payments. Under this procedure, a single payment form and a single instrument of payment may be used to cover multiple regulatory fee payments.²⁰ A multiple regulatory fee payment also may cover payments by more than a single regulatee. Regulatees making combined payments of regulatory fees and application fees within the same lockbox for the Private Radio services may make payment with a single payment instrument and are to submit with the multiple payment a Form 159 and, if needed, a Form 159-C. Also, any regulatee making payment by credit card, including licensees in the private radio services, must submit a Form 159. See Appendix D for specific

¹⁸ See comments filed by FIT, Naber and UTC.

¹⁹ See comments filed by SWB and Bell Atlantic.

²⁰ Payors of regulatory fees for vanity call signs must submit a Form 159 with their applications.

instructions concerning the use of Forms 159 and 159-C.

54. Each regulatee will remain solely responsible for assuring that its applications and authorizations are properly accounted for and listed, and for submitting the full, cumulative payment covering each of its licenses and authorizations.²¹ As described below, payment deficiencies could lead to penalty charges, dismissal of applications and revocation of authorizations.

55. As proposed in our NPRM, we are establishing a single lockbox at our lockbox bank for the receipt of mass media, common carrier and cable regulatory fees. The single lockbox will accept Mass Media, Common Carrier and Cable Services regulatory fee payments and will enable regulatees to submit fee payments for these services to the same lockbox and to combine their fee payments for these service categories. However, Private Radio fees will not be accepted at this lockbox and, instead, should be submitted to the lockbox designated for application fees covering the category of license or authorization for which the payment is made. See sections 1.1152 through 1.1155 for the address, including lockbox number regarding payment of regulatory fees for the specific categories of service.

7. Electronic Payments

56. We have decided to proceed cautiously with our implementation of electronic fee payments. We require that regulatees intending to make fee payments electronically submit a written request to the Managing Director and obtain his written authorization or that of his designee prior to making their initial electronic payment.²² Following authorization by the Office of the Managing Director, a payor may either instruct its bank to make payment of a regulatory fee directly to our lockbox bank or authorize us to direct our lockbox bank to withdraw

²¹ Payment of a regulatory fee may be made by a third party, as NABER and NECA request. However, the entity subject to the requirement to pay the fee will remain responsible for ensuring correct and timely payment.

²² NYNEX has suggested that responsibility for recommending rules and procedures relating to the electronic payment of regulatory fees by common carriers be given to the proposed advisory committee that would be established to assist the Common Carrier Bureau in the development and implementation of an electronic filing system. See Public Notice, 9 FCC Rcd 1293 (1994). Since our system for the electronic payment of fees will soon be operational, we decline to combine these tasks into a single project. However, the Commission staff involved in these undertakings will closely coordinate their activities.

funds directly from the payor's bank account. It is the responsibility of the entity subject to the regulatory fee payment to assure compliance with our electronic payment procedures. We will announce specific procedures for electronic payment by public notice. Failure to comply with these procedures will result in the return of the fee payment and a penalty of 25 percent if the subsequent refiling of the payment is late. Any late payment resulting from a failure to comply with our electronic fee payment procedures will also subject the payor to the penalties set forth in section 1.1163 of the rules.

57. Credit card payments may be made only with Mastercard and Visa since at this time these are the only credit cards authorized for payments to the United States Treasury. Credit card payments must be accompanied by a Form 159. Failure to accurately enter an authorized signature and the credit card name, number and date of expiration in blocks 22 and 23 of Form 159 will result in the return of the credit card payment and any associated filing.

E. Enforcement of Regulatory Fees Statute and Regulations

58. As provided in section 9(c) of the Act, we proposed to enforce payment of regulatory fees by: 1) assessing monetary penalties for late payment, 2) dismissal of applications and, 3) in egregious cases, revocation of existing licenses and authorizations. 47 U.S.C. § 159(c). In addition, we proposed to pursue delinquent regulatees under the Debt Collection Act, 31 U.S.C. § 3711 et seq., and related statutory provisions.

1. Penalties for Late Payment

59. Any regulatee that fails timely to pay its regulatory fee or make an installment payment shall be assessed a 25 percent penalty. See 47 U.S.C. § 159(c)(1). A regulatory fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment.²³ A fee payment is also considered late filed if an instrument of payment is not collectible. A 25 percent penalty will be assessed against any outstanding amount due on a fee, including any amount past due on an installment payment.

²³ The NAB and the Society of Broadcast Engineers have proposed that we consider a regulatory fee payment to be timely submitted if the payment is postmarked by the date it is due. At least for FY 1994, we have decided to continue our practice of requiring fee submissions to be received by the date due. We believe retention of this practice for regulatory fee payments for FY 1994 is necessary to enable us to process these payments efficiently.

2. Dismissal of Application

60. We will dismiss any application, group of applications or other filings in the private radio services when a regulatee fails timely to submit any regulatory fee or associated penalty. 47 U.S.C. § 159(c)(2). A fee payment will be considered to be late filed if a timely filed instrument of payment is uncollectible and the deficiency is not the result of bank error.²⁴ Thus, an application required to be submitted with a regulatory fee will be returned without action if the fee is not filed with the application. Moreover, if the returned application is mutually exclusive and must be filed by a date certain (or is required to be filed by a date certain for any other reason), the application will be dismissed as untimely if resubmitted subsequent to the filing deadline.²⁵

3. Revocation

61. Section 9(c)(3) provides the Commission with authority to revoke an existing license or other authorization for nonpayment of a regulatory fee. 47 U.S.C. § 159 (c)(3). We proposed to reserve our revocation remedy for egregious cases of nonpayment. Section (9)(c)(3) does not require a finding of "willful or repeated" failure to make payment before a license or authorization may be revoked. Further, the section affords the right to a hearing only if a regulatee's response to our notice of revocation presents a "substantial and material question of fact."

62. Consistent with the statutory framework for revocation, any revocation hearing will be resolved by written evidence only and the burden of proceeding and the burden of proof will be on the respondent. As proposed, we will provide a period of 60 days for a regulatee to respond to our notice of revocation in order to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case. Further, we will assess the regulatee for the costs for the conduct of any revocation proceeding unless the regulatee

²⁴ As noted in the NPRM, we will not accept instruments of payment other than cashier's checks for payors who are notified that payment will not be accepted by other payment methods. Of course, while we discourage the use of cash for the payment of fees generally, payment by cash is permissible. See 31 U.S.C. § 5193. We will not be responsible for cash lost or stolen in the process of delivery to our lockbox bank.

²⁵ In any case in which a fee payor believes that a monetary or other penalty has been wrongfully imposed, the fee payor may file a petition requesting that the penalty be set aside.

"substantially" prevails at the hearing. 47 U.S.C. § 159(c)(3). Finally, pursuant to section 9(c)(3), an order of revocation will not become final until the respondent regulatee has had an opportunity to exhaust its rights to judicial review under section 402(b)(5) of the Act. 47 U.S.C. § 402(b)(5).

63. MCI recognizes that we should use our authority to revoke licenses and assess penalties as tools to enforce payment of fees. However, MCI urges that we restrict their use to cases where a licensee "willfully" has acted in bad faith in not paying the required fee. MCI states that this is particularly important for licensees with large and complex operations in services where licensing information currently is not included in our records since licensees with numerous authorizations may have no other way to confirm existing licenses. In these instances, according to MCI, we should attempt to resolve nonpayment issues informally since most fee payment disputes should be quickly and easily resolved.

64. We agree with MCI that our revocation powers should not be lightly invoked. We stated in the NPRM that we would reserve the right to revoke licenses held by a delinquent regulatee, but that we did not foresee the need for revocation, except in egregious circumstances. We will not consider a failed payment to be egregious as long as the regulatee demonstrates that its deficiency was not due to gross neglect in maintaining its records or in preparing to meet its obligation to make the fee payments. However, we intend to automatically assess delinquent payors a 25 percent penalty for late or missing payments, and such assessments will be strictly enforced.

4. Debt Collection Act Remedies

65. In addition to those specific remedies for nonpayment or untimely payment of regulatory fees provided in section 9, we will invoke our powers under the Debt Collection Act against any regulatee failing to pay a regulatory fee. See 31 U.S.C. § 3711 et seq. We will afford a regulatee a 30 day period to respond to our notice of delinquency before invoking the procedures provided in the Debt Collection Act. Moreover, when necessary, we will refer outstanding debts of delinquent regulatees to the Internal Revenue Service for offset. See 31 U.S.C. § 3720A. Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process. See 31 U.S.C. § 3717.

IV. Regulatory Fee Categories

66. In our NPRM, we provided an explanation of the regulatory fee categories subject to the payment of a fee under the schedule established by Congress. 47 U.S.C. § 159(g). Where a regulatory

fee category required additional interpretation or clarification, we relied on the legislative history of section 9 and our experience in establishing and regulating the various services. The categories and amounts set out in the schedule may, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in our appropriations, costs and changes in the nature of our regulated services. See 447 U.S.C. § 159(b)(2), (3).

67. Several parties have submitted comments regarding the regulatory fee categories. Generally, the comments addressed issues concerning possible adjustment of the required fees, the absence of certain services from the fee schedule, and definitions of terms important to payment of the fees. We address these comments below. In certain instances, we have clarified our explanation of a fee category based upon the comments of the parties. See Appendix B.

A. Private Radio Bureau

68. The two basic levels of statutory fees allocated for Private Radio Services, exclusive use and shared use services, were established on the premise that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share channels of marginal quality.²⁶ House Report at 17. In addition, because of the relatively small fee amounts levied in the Private Radio Services, as we proposed in the Notice, applicants for new licenses, reinstatement and renewal licenses will be required to pay a regulatory fee covering an entire license term. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee since the expiration date of modified or assigned licenses will not reflect a new license term.

1. Exclusive Use

69. B&S disputes our interpretation of the fee schedule's requirement for Private Radio Service fees. Essentially, B & S contends that the term "shared use services," as it appears in the Schedule of Regulatory Fees, applies to systems that share use of their licensed facilities with others. According to B&S, an 800 MHz Specialized Mobile Radio Service licensee providing service to end users is an example of a shared use service because the SMRs customers are sharing the same base station facility. B&S argues that their analysis is consistent with 47

²⁶ As noted, for FY 1994, we will not impose a regulatory fee upon applicants for lifetime restricted radiotelephone permits and radio operator licenses.

C.F.R. § 90.179 and precedent interpreting that provision of our rules. According to B&S, it follows that "exclusive use services" are comprised of licensed facilities that are used only by the licensee. An example of what B&S considers an exclusive use service is a licensee in the Taxicab Radio service that operates an internal communications system in the 470-512 MHz band.

70. B&S confuses the concept of shared use of a particular licensed facility with that of shared channel assignments. Under 47 C.F.R. § 90.179, a licensee or group of licensees may choose to share base station facilities on a non-profit or not-for-profit basis. In contrast, shared channel assignments require licensees to be licensed for the same channel for the same geographic area, and it is this latter concept that the Schedule of regulatory fees clearly addresses. As we have recently explained in our Notice of Proposed Rulemaking in PR Docket No. 92-235,²⁷ the private land mobile radio services licensed below 470 MHz²⁸ do not enjoy exclusive use of their channel assignments in a particular geographic area, and must accept a greater degree of co-channel interference.²⁹ In contrast, channel assignments above 470 MHz, including the SMR service, are granted on either an exclusive basis, with no other co-channel use authorized in a geographic area, or are licensed on an "earned exclusivity" basis, where co-channel use is capped. Thus, licensees of services above 470 MHz enjoy a lesser degree of interference than those below 470 MHz, and, accordingly, are required to pay the higher regulatory fee. To accept B&S's interpretation would ignore the established demarcation point between "shared" and "exclusive" channel assignments that 470 MHz represents.

71. RAM Mobile Data USA Limited Partnership (RMD) states that 900 MHz SMR licensees should be required to pay a fee based upon their total number of licensed Designated Filing Areas (DFA) rather than their number of base station and frequencies individually licensed with a DFA. RMD contends that an assessment based upon total DFAs licensed is more consistent with Congress' intention that regulatory fees be "reasonably related

²⁷ 8 FCC Rcd 8105, paras 11-13 (1992).

²⁸ The 220-222 MHz band is the sole exception, where we have created exclusive use channels below 470 MHz.

²⁹ While there may be rare instances where a particular licensee below 470 MHz does not share its channel assignment with other licensees in a geographic area, these licensees have no ability to preclude new licensees from requesting the same channel assignment.

to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. § 159(b)(1)(A). Further, RMD states that section 9(g)'s fee requirements will compel a consolidation of its licenses in order to minimize its fee payments. Similarly, the Utilities Telecommunications Council (UTC) objects to the requirement that 220 MHz licensees submit fees on a per license basis.

72. We decline to consider amending the section 9(g) fee schedule for FY 1994. As we have stated, Congress did not intend that we adjust any aspect of the fee schedule for FY 1994. RMD and UTC may submit their proposals for amending the fee schedule in our proceeding to establish regulatory fees for FY 1995.³⁰ Of course, RMD and any other licensee may surrender or modify their licenses and other authorizations in order to minimize their regulatory fee burden.

2. Marine (Coast and Ship Stations)

73. Numerous formal and informal commenters, including the United States Coast Guard, raise concerns about our proposal to collect a regulatory fee from licensees in the marine service, including licensees using radio equipment voluntarily installed on small vessels, such as recreational boats.³¹ These parties contend that a waiver, or exemption, for vessels that voluntarily carry radio equipment would enhance maritime safety and promote the public interest. As support, the parties state that marine radio provides a vital link between recreational boaters and emergency safety entities, as well as an important source for weather and navigational information. Further, they contend that

³⁰ RMD asks that we waive our requirement that SMR licensees pay their fees in advance and, instead, permit them to submit these fees on an annual basis. RMD contends that the overall fees that may be imposed on SMR systems are not "small" and, therefore, fall outside the category of fees that Congress authorized us to collect in advance. We decline to allow RMD to pay its fees on an annual basis because Congress specifically indicated that fees for private radio services licensees, including licensees of SMR systems, would be considered small and subject to the payment of fees in advance. See H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991).

³¹ In addition to the USCG, the commenters include the National Marine Electronics Association, Radio Technical Commission for Maritime Services, State of Nevada, Division of Wildlife and the United States Power Squadrons. We also received and considered informal comments filed by numerous parties concerned about the regulatory fee required from recreational boaters.

the regulatory fee, added to the existing application fee, will act as a substantial disincentive for recreational boaters to carry, maintain and operate marine communications equipment.

74. We recognize that radio communication between recreational boaters and various emergency safety entities provides an important public service. However, our authority to waive a fee requirement is limited to "narrow" and "compelling circumstances." 2 FCC Rcd 947, 961 (1987); H.R. 3128, H.R. Rep. No. 453, 99th Cong. , 1st Sess. 39-42, 423 (1985). In view of this strict Congressional limitation , we do not believe that a "blanket waiver" granted to boaters operating marine radios is permissible, absent legislative amendment.

3. General Mobile Radio Service

75. The Personal Radio Steering Group (PRSG) requests that we lower the annual fee for licensees in the General Mobile Radio Service (GMRS). PRSG states that, because the Schedule of Regulatory Fees does not explicitly include a fee for GMRS, we have authority to reduce its fee. Moreover, PRSG contends that the service should be subject to a lower fee than that for other shared use services because it is intended primarily for personal communications, similar to the Amateur Radio Service.

76. We agree with PRSG that section 9(g)'s fee schedule contains no explicit terms regarding the GMRS. However, that section does require the payment of a fee by "shared use" services in the private radio service. GMRS is within that category of service and was explicitly mentioned in the House Report as a service that would be subject to a fee. Therefore, we conclude that GMRS licensees are subject to a \$7.00 fee for each year of the license term, payable in advance upon the filing of a GMRS application. We decline to rule on the merits of PRSG's argument that its fees should be lowered because, as discussed above, we conclude that Congress for FY 1994 intended us to assess fees in accordance with its Schedule.

B. Mass Media Services

1. Broadcast Stations

77. The regulatory fees in the Schedule for Mass Media services generally include broadcast licensees, permittees and other regulatees. As discussed above, we have exempted noncommercial educational broadcasters from regulatory fees. To the extent possible, we intend to use the Bureau's computer data bases to verify the identity of regulatees subject to regulatory fees in the Mass Media services.

78. Several commenters contend that the statutory fee schedule is unfair to certain categories of licensees in the Mass Media

services and complain that the schedule fails to impose a fee on other categories of regulatees. De La Hunt Broadcasting Corporation and the Broadcasting Associations believe that radio broadcaster licensees should be assessed regulatory fees on a market-size basis, in a manner similar to the fees mandated for television stations. The NAB urges that we adjust the schedule for radio broadcast licensees when we consider appropriate fees for future years. Further, the Broadcasting Associations contends that we should not include a television station as being in a major market unless that station serves the metropolitan area of that particular market.

79. We decline to consider any adjustments to the schedule for FY 1994 for radio and television stations. As we explained above, we believe that Congress did not intend that we adjust any aspect of the fee schedule it established for FY 1994. Interested parties may submit comments, however, addressed to modifying the method for assessment of radio and television broadcasting fees at the time we issue our proposed schedule of fees for FY 1995.

2. Television Stations

80. Section (9)(g) provides that the regulatory fee charged a television licensee will be determined by the size of its market. We recognized in our NPRM that Arbitron no longer provides television rating information. However, no party has proposed that we rely on another mechanism for determining market size. Therefore, we will utilize Arbitron's ADI rankings for 1993-1994 for the determination of television markets for assessing our FY 1994 regulatory fees since it appears, at this time, that these are the most familiar and readily available tools for determining the relative ranking of television markets.

81. KBS License L.P. (KBS) and the NAB argue that satellite television stations should not be subject to the same regulatory fee payment as fully powered television stations. The NAB contends that satellite television stations should be assessed as if they were television translator stations. KBS argues that our proposal to assess fees for satellite stations at the same level as full powered stations is inconsistent with section 9. First, in KBS's view, Congress established regulatory fees for commercial television stations, and did not set any fee requirement for satellite television stations. Second, according to KBS, Congress intended the Commission to charge licensees fees based on the regulatory burden they impose, yet satellite stations require much less regulatory oversight than full powered stations. Also, KBS contends that the fee would place an unfair and illogical burden on small market licensees who use satellite television stations to reach remote areas in their markets.

82. Section 9(g)'s fee schedule establishes specific fees for

commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations, including satellite stations.³² Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations. We therefore reject KBS's argument that Congress failed to establish a fee for television satellite stations. However, there are anomalies concerning the treatment of satellite stations that are a matter of concern to us and that we believe would be appropriate for consideration on a case-by-case basis. First, where a licensee would be required under the fee schedule to pay a higher fee for its satellite station than for the parent station, we will entertain petitions to reduce the satellite station's fee to the same amount as the fee due for the parent station. In such a case, the licensee would be required to submit with its request an amount no greater than the fee due from the parent station. Second, in any situation in which payment of the fee would cause a diminishment of a licensee's ability to continue to serve the public, we will entertain requests for waiver or reduction of the fee upon an appropriate showing. In this instance, the licensee would not be obligated to pay the fee until resolution of its waiver request.

83. KBS and the NAB may submit comments in our future proceeding to establish regulatory fees for FY 1995, supporting their positions concerning the need to distinguish between satellite and fully operational stations when assessing regulatory fees. As explained above, for FY 1994, we shall make no adjustments to Congress' fee schedule pursuant to section 9(b).

3. Broadcast Auxiliary

³² Unlike other full service television broadcast stations, satellite stations have not been subject to the Commission's multiple ownership restrictions. However, that distinction is currently under review in our Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991).

84. The Society of Broadcast Engineers, Inc. (SBE) believes that broadcast auxiliary facilities, such as remote pick-up stations, and aural, television and low power auxiliary stations, should not be subject to any regulatory fee. SBE explains that there is no justification to apply a regulatory fee to these facilities since they are essentially self-regulating and impose little burden on our resources. As indicated above, we shall not modify any of section 9(g)'s fee requirements for FY 1994, but SBE may raise these issues in future proceedings.

4. ITFS and DBS

85. Finally, the Joint Parties contend that we should amend the fee schedule to add several services not subject to fees for FY 1994. These services include the commercial offering of Instructional Television Fixed Services (ITFS) and Direct Broadcast Satellite Service (DBS). We decline the Joint Parties' request to add these services to the schedule for 1994 since Congress did not provide us the authority to add any service to the schedule for FY 1994. Moreover, we are aware that ITFS is a predominantly nonprofit service with limited commercial use and, further, that DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.³³ To the extent that the Joint Parties wish to renew their arguments concerning the inclusion of these services for future years, they may do so when we consider our fee payment schedule for FY 1995.

C. Common Carrier Bureau

86. Most common carrier regulatory fees are based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas. We intend to rely upon the Common Carrier Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers to the extent possible. We also intend to perform periodic, random audits to determine whether individual regulatees have reported the correct multiplier.

1. Cellular and Public Mobile Licensees

³³ The Joint parties point out that the fee schedule contains no explicit fee requirement for Multipoint Distribution Service (MMDS). However, our schedule, modeled on the schedule contained in section 9(g) of the Act, explicitly requires the payment of a regulatory fee by Domestic Public Fixed licensees, operating under Part 21 of our rules. Since MMDS is a Part 21 service, it is fully subject to the regulatory fee prescribed for Part 21 licensees.

87. The Personal Communications Industry Association (PCIA) states that we should define the term "subscriber" as it applies to Part 22 and personal communications services licensees. PCIA suggests that we require Part 22 licensees to pay their fees based on the number of customers on their billing lists and urges that we permit Part 22 licensees to submit their fee payments pursuant to systemwide aggregations of subscribers. Also, PCIA contends that we should permit paging licensees to calculate their fees by aggregating their total subscribers, rather than determining their fee payments by call sign, as required by section 9(g), and to submit one instrument of payment per carrier system.³⁴

88. Our rules do not define a mobile service subscriber. For purposes of calculating regulatory fees, we will define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration. Further, any Part 22 licensee may submit a single, aggregate payment to cover the regulatory fees due for each of its individual systems. However, each individual system and service should be clearly enumerated on the payor's FCC Form 159 accompanying the fee payment. PCIA may submit its proposal to modify the method for calculating fee payments by paging licensees in our proceeding for establishing fees for FY 1995.

2. Air-Ground Radiotelephone Service

89. Claircom Communications Group, L.P., GTE and In-Flight Phone Corporation request clarification of the definition of "subscriber" in section 9(g) when applied to the payment of regulatory fees for the Air-Ground Telephone Service. Unlike conventional telephone service, subscribers to that service, usually operators of commercial aircraft, lease their service for the purpose of making it available to their own customers. There is no contractual relationship between the air-ground service operator and the end user of its service. Consequently, as suggested by the parties, we will treat the operator of an aircraft in which its service is installed as the subscriber to the service and charge the fee based upon the number of transceivers leased by the operator. Similarly, licensees in the air-ground service should include in their total fee a payment on a transceiver basis for service they provide to users other than commercial aircraft, such as private aircraft.

³⁴ PCIA also requests that we recalculate the regulatory fee for CMRS for FY 1995. PCIA may submit its comments regarding the fee for CMRS in the proceeding we establish to prescribe fees for FY 1995.

3. Space Stations

90. Comsat General Corporation (Comsat), GE American Communications, Inc. (GE American), Orbital Communications Corporation (Orbital) PanAmSat, L.P. (Panamsat) and Starsys Global Positioning, Inc. (Starsys) have submitted comments addressed to our proposals concerning the requirements of satellite licensees to submit regulatory fees. Comsat and GTE state that the regulatory fee for a geosynchronous orbit space station is excessive. Comsat argues that the fee requirement should be lowered for FY 1994 because these systems no longer require the regulatory attention they received in their earlier developmental stage. It argues that the fee also is a disincentive to maintaining older and underutilized satellites in orbit for back up purposes and is anticompetitive and anti-consumer. As we have stated earlier, we shall not adjust the schedule of fees that Congress has enacted for the assessment of fees for FY 1994. Comsat may submit its comments in the future proceeding that we will initiate in order to establish appropriate fees for FY 1995.

91. We also received comments from Orbital and a reply comment from Starsys concerning when a satellite space station becomes subject to the fee requirement. Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.120(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels. Similarly, a space station or system will be considered to have terminated its operation when its licensee certifies to us that the satellite has ceased to operate.

92. Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 C.F.R. § 25.120(d).

4. Earth Stations

93. AMSC Subsidiary Corporation contends that no payment of regulatory fees for earth stations and mobile terminals should be

required until their related satellite system is operational.³⁵ However, we observe that the licensing of satellite earth stations is entirely separate from the licensing of space stations and that fixed-satellite earth stations are generally licensed to operate with any and all domestic satellite systems located in that portion of the geostationary orbit for which the earth station has been frequency coordinated. It is common practice for a satellite system to provide preliminary service via unrelated space stations before its own stations are launched and operational.

94. We will require the licensee of an earth station to pay a fee once it has certified that the earth station's construction is completed. However, in those rare instances in which a license limits an earth station's operational authority to a particular satellite system and that system is not operational on the date for calculating the fee, the fee will not be due until the first satellite of the related system becomes "operational" within the meaning of our fee rules.

5. Interexchange and Local Exchange Carriers

95. Generally, the comments of local exchange carriers (LECs) and interexchange carriers (IXCs) raise issues concerning the basis upon which they are to calculate their fee payments, the need for a definition of the term "subscriber," and a date for calculating their fee payments.³⁶

96. We will adopt our proposal to permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.³⁵ We have considered the proposals of several commenters, including Ameritech, Nynex and SWB, that LECs submit fees based upon ARMIS data. However, ARMIS

³⁵ AMSC states that its satellite will be launched in December 1995, but that its earth and mobile stations will likely be licensed before September 1994.

³⁶ Allnet and MCI point out that resellers and pay telephone operators are not among those regulatees listed in the fee schedule. We will review whether these entities should be directly subject to a fee payment in the course of our proceeding to determine regulatory fees for FY 1995.

³⁵ We agree with Allnet that entities operating as both LECs and IXCs are subject to a regulatory fee for both categories of service. However, as GTE suggests, we will require a carrier to submit only a single payment when a single commonly-owned line serves as both a presubscribed line and an access line.

data is required from comparatively few LECs and we would still need a mechanism to calculate the fees due from the vast majority of LECs. Therefore, we have decided that all LECs are to calculate the amount of their regulatory fees based upon the number of working loops as described in section 36.611 of our rules, governing the submission of Information to the National Exchange Carrier Association (NECA).³⁶ We believe that this definition will be simple to administer since the LECs currently compile subscriber loop data, and it will provide a consistent formulation for the assessment of fees from all LECs.³⁷ As noted, for FY 1994, we will require LECs to calculate their fee payments for FY 1994 as of December 31, 1993.³⁸

97. In the NPRM, we invited comments concerning section 9(g)'s assessment of regulatory fees from IXC's on a subscriber basis. In response, AT&T, opposed by Wiltel, Inc., argues that fee payments by IXC's should be based on gross revenues, not by the number of a carrier's subscribers. We decline to reach the merits of AT&T's argument at this time because, as indicated

³⁶ NECA has proposed to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. We have no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made and that it is subject to penalty for failure to submit the entire fee due in a timely manner. LECs will be expected to pay their fees based upon the number of access lines as determined by NECA. In case of a dispute between a carrier and NECA concerning the carrier's line count as of December 31, 1993, NECA will certify its calculation of the carrier's line count and the basis for its calculation.

³⁷ We expect competitive access providers (CAPs) to submit fee payments based upon their line count as required under section 9(g). Ameritech, GTE and other interested parties may submit their views on the proper method of assessing regulatory fees for CAPs in our proceeding to establish fees for FY 1995.

³⁸ Several LECs, including Ameritech, GTE, NYNEX and Bell South, opposed by Allnet, contend that their regulatory fee payments qualify for exogenous treatment under the price cap rules and ask that we allow their regulatory fee expense to be charged directly to their subscribers. Their request is beyond the scope of this proceeding. LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission's rules.

above, we shall not adjust the fee schedule for FY 1994. Any reformulation of the basis upon which IXC's are to base their fee payments would constitute a substantial adjustment to the fee schedule that Congress enacted. IXC's shall file fees based on the total number of common lines presubscribed to that IXC as determined pursuant to section 69.116 of the rules. 47 C.F.R. § 69.116. AT&T may submit its views concerning the appropriate method of assessing fees from IXC's in our proceeding to establish regulatory fees for FY 1995.

6. International Bearer Circuits

98. Panamsat requests clarification concerning the assessment of regulatory fees for international circuits. Section 9 (g)'s Schedule provides that the fee is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. In the NPRM, we stated that the fee would be based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international services are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits such as circuits derived by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of Equivalent 64 KB Circuits
36	630
24	288
18	240

D. Cable Services

99. Several commenters contend that the fee prescribed for cable television services should be paid on an exact per subscriber

count rather than per 1,000 subscribers, as we proposed.³⁹ These commenters argue that the latter formulation would cause small cable systems to pay a disproportionately high regulatory fee. For example, a cable system with 100 subscribers would be subject to the same fee as a system with 1,000 subscribers.

100. The text of section 9(g)'s fee schedule provides for the assessment of a fee for cable television systems at the rate of \$370.00 per 1,000 subscribers. Upon further consideration, we agree with the commenters that Congress did not intend that this provision required that a system pay its fee as if it served 1,000 subscribers when in fact it provides services to fewer than 1,000 subscribers.⁴⁰ Following this formulation to its logical extreme would impose on small cable systems a disproportionate burden of the aggregate cable service regulatory fee since it would result in the assessment of larger fees upon small systems, particularly those with fewer than 1,000 subscribers. Thus, we believe Congress' purpose was to require cable systems to formulate their fee based on the schedule's assessment of \$370.00 per 1000 subscribers, but to pay the fee on an exact per subscriber count. Payment of the cable fee on the basis of the exact count of a system's subscribers will eliminate the inequity perceived by the commenters.

101. NCTA and Nationwide support our proposal to permit cable systems to submit their regulatory fees on the basis of the aggregate fee payable by commonly owned systems.⁴¹ Therefore, we will permit commonly owned cable systems to combine their fee

³⁹ These commenters include the United States Small Business Administration, Cable Services, Inc., the Cable Telecommunications Association, the National Cable Television Associations, Nationwide Communications, Inc. and the Small Cable Business Association.

⁴⁰ We reject the Joint Commenters' argument that the regulatory fee for cable systems be reduced when any of a system's channels are made available to competitors pursuant to 47 U.S.C. § 532. Congress has based the regulatory fee for cable systems upon the number of subscribers served, not the number of a system's channels available for the system's direct use.

⁴¹ NCTA, the Joint Commenters and Continental request authority for cable systems to pass through their regulatory fees to cable television subscribers as external costs. Only those items currently itemized in the rule as external costs may be passed through to cable subscribers. Regulatory fees are not among the enumerated items and the pass through process is not the subject of this proceeding. Therefore, this matter should be addressed separately.

payments for submission to our lockbox bank. Finally, for purposes of calculating the fee due from cable operators, we will adopt the definition of a cable subscriber, including bulk rate subscriber, used for FCC Form 325. See FCC Form 325 Instructions (Page 3).

V. Amendments to Application Fee Rules

102. In addition to the new rules for regulatory fees, we are revising several sections of our rules governing fees associated with applications and other filings. Filing fees are required pursuant to section 8 of the Communications Act and are administered separately from the regulatory fees authorized under section 9.⁴²

A. Fees for Resubmitted Applications

103. We have amended section 1.1107(d) of the rules, as proposed. Section 1.1107(d) governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. We have amended section 1.1107(d) to require persons submitting applications or other filings that have been returned for additional information or corrections and that do not require any additional fees to submit these applications and other filings directly to the Bureau/Office making the request. Applications requiring additional fees must be filed at our lockbox bank with the remittance for the entire additional amount due. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount of the revised fee) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained, but a 25 percent late fee will be assessed on the deficient amount even if we have completed our action on the application or other filing involved.

B. Stale Checks

104. Our lockbox bank will not process a personal or business check dated more than six months prior to its submission.

⁴² We will publish in the FCC Record actions, including actions taken on delegated authority, related to the application and regulatory fee rules that have precedential value.

Therefore, we have revised section 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument. Further, we will not accept any third party checks (i.e., checks with the name of any third party as the maker or endorser).

C. Receipts

105. Our practice with regard to stamped receipts for application fee payments is to furnish receipts only upon specific request of the submitter rather than to provide receipts automatically for all fee payments received. We are clarifying these procedures by amending section 1.1108 of the rules. In order to obtain a receipt for a fee payment, section 1.1108 will require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy," submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelop of sufficient size to contain the date-stamped copy of the application. We will provide a receipt for regulatory fee payments, upon request, if we are furnished with a copy of Form 159 or the first page of an application in the private radio services accompanying the fee payment and the request otherwise conforms with the procedures we have adopted for receipts of application fees.

D. Electronic Application Fee Payments

106. We are adopting rules regarding the submission of regulatory fee payments by electronic means. Revised sections 1.1107 and 1.1108 of the rules allow the payment of application and other filing fees by electronic means, although our system for electronic payment is not yet fully in place. In our NPRM, we stated our concern about matching electronically paid fees with submitted hard-copy applications.⁴³ If a party chooses to pay its application filing fee electronically, we will require that the entity follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice

⁴³ We note that some parts of the Commission are currently experimenting with electronic filing of applications.

(FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. The electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request will be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our prior authorization before making electronic fee payments. (See paragraphs 56 and 57, above.)

E. One Check/One Application Rule

107. We are modifying our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159-C, FCC Remittance Advice Continuation Sheet.⁴⁴

F. Payment by Cashier's Check

108. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, as proposed, when a person or organization has, on one or more occasions, submitted a payment instrument on which final payment is not received (and is not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by a cashier's check (or cash), that party's other payment instrument will not be accepted and its application or other filing will be returned. 47 C.F.R. § 1.1108(d)(1)(i); see also 47 C.F.R. § 1.1110(a).

⁴⁴ All non-private radio section 9 regulatory fee payors must use FCC Form 159/159C when submitting single or multiple regulatory fees.

G. Filing Locations for Petitions and Applications for Review

109. We have revised sections 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to our lockbox bank. If no fee payment is required and the matter is within the scope of either the application or regulatory fee rules, the request should be filed with the Secretary and clearly marked to the attention of the Managing Director.

VI. Confidentiality

110. The Cellular Telecommunications Industry Association, GTE and Southwestern Bell Corporation urge that we amend section 0.457 of our rules to safeguard the confidentiality of data submitted with regulatory fees, including fee amounts that are calculated on a per line or subscriber basis. 47 C.F.R. § 0.457. At this time, we will not amend our rules to include a provision affording automatic confidentiality for information submitted with regulatory fees. Generally, regulatees are required to submit very little data with their fee payments and it is premature for us to determine whether the disclosure of any information submitted, including the fee amounts calculated on a per subscriber basis, will warrant the protection afforded by section 0.457. Payments of regulatory fees may be accompanied by requests for confidentiality pursuant to section 0.459 of the Commission's rules. 47 C.F.R. § 0.459.

VII. Final Regulatory Analysis

111. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

112. This Report and Order adopts the Schedule of Regulatory Fees enacted by Congress for the assessment and collection of the Commission's regulatory fees for FY 1994 and adopts rules to govern the assessment and collection of regulatory fees for FY 1994 and future years. The rules, as required by Congress, include provisions for the advance payment of small fees, the payment of large fees by installment, and procedures for waiver, reduction and deferral of fees by regulatees that demonstrate that payment of the fee would be a financial hardship, as well as penalties for late or nonpayment of fees.

II. Summary of Comments raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

113. The Chief Counsel for Advocacy of the United States Small

Business Administration (SBA) filed comments urging that cable television system operators be permitted to pay their fees on a per subscriber basis (\$.37) rather than in increments of 1,000 subscribers (\$370.00) or any portion thereof. The Report and Order adopts the SBA's proposal.

III. Significant Alternatives Considered:

114. The Notice of Proposed Rulemaking in this proceeding offered many proposals, including reliance on the Schedule of Regulatory Fees as established by Congress in section 9(g) of the Communications Act, 47 U.S.C. § 159(g), exemptions from regulatory fees, installment payments for large fees, advance payments for small fees, payment procedures, including payment by electronic transfer and credit card, procedures for waiver, reduction and deferment of fees, and penalties for late or nonpayment of fees. Our proposals to adopt the service categories and fee amounts in Congress' fee schedule and for waiver, reduction and deferment of fees were discussed by many commenters. Fireweed and the Joint Commenters urged that we amend the fee schedule to reduce the fees and add services subject to a fee payment. NAB and the State Broadcasters urged that we modify our proposed procedures for requesting a waiver, reduction or deferment of a fee payment. Upon review, we affirmed that Congress intended that we utilize section 9(g)'s fee schedule for FY 1994. However, we adopted more flexible procedures for obtaining a waiver, reduction or deferment of the fees in order to afford more regulatees the opportunity to obtain a waiver, reduction or deferment of the fees and we clarified the showing required for adjustment of a fee based on financial hardship.

VIII. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that the rule changes as specified below ARE ADOPTED.

116. IT IS FURTHER ORDERED that the rule changes made herein will become effective 30 days after publication in the Federal Register. This action is taken pursuant to sections 4(i), 4(j), 8, 9 and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 158, 159, 303(r).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

RULE CHANGES

47 C.F.R. Parts 0 and 1 are amended as follows:

PART 0, COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Sec. 0.231 is amended by revising paragraph (c) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(c) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver, reduction or deferment of fees, establish payment dates, and issue notices proposing amendments or adjustments to the fee schedules established under Subpart G, Part 1, of this chapter.

* * * * *

3. Sec. 0.406 is amended by revising paragraph (b) (2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) Part 1 of this Chapter, practice and procedure. Part 1, Subpart A of this Chapter contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1, Subpart A of this Chapter also contains certain other miscellaneous provisions. Part 1, Subpart B of this Chapter contains the procedures applicable in formal hearing proceedings (see § 1.201 of this chapter). Part 1, Subpart C of this Chapter contains the procedures followed in making or revising the rules or regulations. Part 1, Subpart D of this Chapter contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the

filing requirements, the procedures for processing and acting upon such applications, and certain other matters. Part 1, Subpart E of this Chapter contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21 of this Chapter. Part 1, Subpart F of this Chapter contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Part 1, Subpart G of this Chapter contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272, 100 Stat. 82 (1986)) and also contains rules pertaining to the regulatory fees established by the Omnibus Budget Reconciliation Act of 1993 (Pub.L. 103-66, 107 Stat. 397 (1993)). Part 1, Subpart H of this Chapter, concerning ex parte presentations, sets forth standards governing communications with commission personnel in hearing proceedings and contested application proceedings. Part 1, Subparts G and H of this Chapter will be of interest to all regulatees, and Part 1, Subpart H of this Chapter will, in addition, be of interest to all persons involved in hearing proceedings.

* * * * *

Part 1 Practice and Procedure

4. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j).

5. Sec. 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, D.C., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with §1.1105, Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see Subpart G of this Part) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the type covered by this chapter, an original and two copies of each such application

shall be submitted.

* * * * *

6. Newly designated Sec. 1.1108 is amended by revising paragraphs (a) through (d) to read as follows:

§ 1.1108 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form. We anticipate completing this change on or before September 30, 1997.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1117 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely

payment of these charges are contingent and subject to recession.

* * * * *

7. Sec. 1.1109 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§1.1109 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (i.e., checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

* * * * *

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's

check, the party's payment will not be accepted and its application or other filing will be returned.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

* * * * *

8. Sec. 1.1110 is amended by revising paragraph (a) to read as follows:

§ 1.1110 Filing locations.

(a) Except as noted herein, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1105 of the Commission's rules.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§ 1.1102 through 1.1105, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1116(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. § 158(d)(1) or § 1.1112 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate

service set forth in §§ 1.1102 through 1.1105.

* * * * *

9. Sec. 1.1116 is amended by revising the section heading and paragraph (c) to read as follows:

§1.1116 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

10. Sec. 1.1151 is added to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI, section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

11. Sec. 1.1152 is added to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for private radio service.

Services	Fee amount	Address
Exclusive use services (per license)		
1. Land Mobile (Above 470 MHZ, Base Station & SMRS) (47 CFR, Part 90)	\$16.00	FCC, Land Mobile P.O.Box ____* Pittsburgh, PA 15251-5---
2. Microwave (47 CFR Pt 94)	\$16.00	FCC, Microwave P.O. Box ____* Pittsburgh, PA 15251-5---
3. Interactive Video Data Service	\$16.00	FCC, IVDS P.O. Box ____* Pittsburgh, PA 15251-5---
Shared Use Services	\$ 7.00	FCC, Shared Use Services, P.O. Box ____* Pittsburgh, PA 15251-5---
Amateur Vanity Call Signs	\$ 7.00	FCC, Amateur Vanity Call Signs, P.O. Box ____*, Pittsburgh, PA 15251-5---

NOTE: Refer to Private Radio Service Fee Filing Guide for appropriate Post Office Box.

12. Sec. 1.1153 is added to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

AM Radio (47 CFR, Part 73)		
1. Class D Daytime	\$250.00	FCC, AM Branch
2. Class A Fulltime	\$900.00	P.O. Box 358835
3. Class B Fulltime	\$500.00	Pittsburgh, PA
4. Class C Fulltime	\$200.00	15251-5835
5. Construction Permits	\$100.00	
FM Radio (47 CFR, Part 73)		
1. Classes C, C1, C2, B	\$900.00	FCC, FM Branch
2. Classes A, B1, C3	\$600.00	P.O. Box 358835
3. Construction Permits	\$500.00	Pittsburgh, PA
		15252-5835
TV (47 CFR, Part 73)		
VHF Commercial		
1. Markets 1 thru 10	\$18,000	FCC, TV Branch
2. Markets 11 thru 25	\$16,000	P.O. Box 358835
3. Markets 26 thru 50	\$12,000	Pittsburgh, PA
4. Markets 51 thru 100	\$ 8,000	15251-5835
5. Remaining Markets	\$ 5,000	
6. Construction Permits	\$ 4,000	
UHF Commercial		
1. Markets 1 thru 10	\$14,400	FCC, UHF Commercial
2. Markets 11 thru 25	\$12,800	P.O. Box 358835
3. Markets 26 thru 50	\$ 9,600	Pittsburgh, PA
4. Markets 51 thru 100	\$ 6,400	15251-5835
5. Remaining Markets	\$ 4,000	
6. Construction Permits	\$ 3,200	
Low Power TV, TV Translator, & TV Booster (47 CFR, Part 74)	\$ 135	FCC, Low Power
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835
Broadcast Auxiliary	\$ 25	FCC, Auxiliary
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835
International (HF) Broadcast	\$ 200	FCC, International
		P.O. Box 358835
		Pittsburgh, PA
		15251-5835

13. Sec. 1.1154 is added to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio Facilities

1. Cellular Radio (per 1,000 subscribers)	\$ 60	FCC, Cellular
2. Personal Communications	\$ 60	P.O. Box 358835
3. Space Station (geo orbit)	\$65,000	Pittsburgh, PA
4. Space Station (low earth)	\$90,000	15251-5835
5. Public Mobile (per 1,000)	\$ 60	
6. Domestic Public Fixed	55	
7. International Public Fixed	5381	

Earth Stations

- | | | | |
|--------------------------------|----|----|--------------------|
| 1. VSAT & Equivalent C-Band | \$ | 6 | FCC, Earth Station |
| antennas (per 100 antennas) | | | P.O. Box 358835 |
| 2. Mobile Satellite Earth | \$ | 6 | Pittsburgh, PA |
| Stations (per 100 antennas) | | | 15251-5835 |
| 3. Less than 9 meters (per 100 | \$ | 6 | |
| antennas) | | | |
| 4. 9 Meters or More | | | |
| Transmit/Receive and Transmit | \$ | 85 | |
| Only (per meter) | | | |
| Receive Only (per meter) | \$ | 55 | |

Carriers

- | | | | |
|--------------------------------|----|-----|-----------------|
| 1. Inter-Exchange Carrier | \$ | 60 | FCC, Carriers |
| (per 1,000 presubscribed | | | P.O. Box 358835 |
| lines) | | | Pittsburgh, PA |
| 2. Local Exchange Carrier | \$ | 60 | 15251-5835 |
| (per 1,000 access lines) | | | |
| 3. Competitive Access Provider | \$ | 60 | |
| (per 1,000 subscribers) | | | |
| 4. International Circuits | \$ | 220 | |
| (per 100 active 64KB | | | |
| circuit or equivalent) | | | |

14. Sec. 1.1155 is added to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services

- | | | | |
|--------------------------------|----|-----|-----------------|
| 1. Cable Antenna Relay Service | \$ | 220 | FCC, Cable |
| 2. Cable TV System (per 1,000 | \$ | 370 | P.O. Box 358835 |
| subscribers) | | | Pittsburgh, PA |
| | | | 15251-5835 |

15. Sec. 1.1156 is added to read as follows:

§ 1.1156 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under sections 1.1152 through 1.1155, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the private radio services.

(1) Any regulatory fee submitted with an application in the private radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the private radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in §1.1159, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the private radio service will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b) Payments of standard regulatory fees, applicable to mass media, common carrier and cable services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the Federal Register.

(1) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments.

(i) For Fiscal Year 1994, large regulatory fees may be submitted in two (2) equal installment payments at times announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the Federal Register.

(ii) For Fiscal Year 1994, installment payments may be submitted for:

(A) VHF and UHF Commercial Television Stations with a fee requirement above \$12,000,

(B) Cable Television Systems whose community units' fee payments total more than \$18,500,

(C) Inter-Exchange Carriers with a fee requirement above \$500,000, and

(D) Local Exchange Carriers or Holding Companies with a fee requirement above \$700,000,

(E) Space Stations with a fee of \$65,000 or above.

(iii) Beginning in Fiscal Year 1995, payors of a large standard regulatory fee, as annually defined by the Commission, may submit their fee payments in four (4) equal installments at times to be announced by the Commission or by the Managing Director, pursuant to delegated authority and published in the Federal Register.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1163.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled and the regulatee required to pay its fee in a single annual payment.

16. Sec. 1.1157 is added to read as follows:

§ 1.1157 Form of payment for regulatory .

(a) Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(1) Upon authorization from the Commission following a written request, electronic payment of a regulatory fee may be made as follows:

(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(iii) No electronic payment of a regulatory fee will be accepted unless

the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in section 1.1163.

(2) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(3) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(4) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the private radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in blocks number 22 and 23 of FCC Form 159 will result in rejection of the credit card payment.

17. Sec. 1.1158 is added to read as follows:

§ 1.1158 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in sections 1.1152 through 1.1155 for the specific category of fee involved.

(1) Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to Sections 1.1153 through 1.1155 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in sections 1.1153 through 1.1155 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in sections 1.1152 through 1.1155.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee

payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

18. Sec. 1.1159 is added to read as follows:

§1.1159 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid.

(i) In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in Block Number 3 of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to Section 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless,

(ii) When a licensee in the private radio service surrenders the license or other authorization subject to a fee payment to the Commission,

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with section 1.1165 of this subpart.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

19. Sec. 1.1160 is added to read as follows:

§ 1.1160 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) will be dismissed and returned;

(ii) shall lose its place in the processing line; and

(iii) will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made the Commission will:

- (i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection;
- (ii) Notify the grantee of this action; and
- (iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

- (1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described above would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

20. Sec. 1.1161 is added to read as follows:

§ 1.1161 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1155 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applicants, permittees or licensees in the Amateur Radio Service, except that any person requesting a vanity call-sign, following the effective date of these rules, shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152 of this Subpart.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. § 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with Sec. 73.503 of the rules.

(f) Applicants, permittees, or licensees qualifying under Sec. 1.1161(e) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), private radio service, or common carrier communications service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under Sec. 1.1161(e), may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating proposing a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under Sec. 1.1159 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (Sec. 74.901 et seq.) is exempt from regulatory fees where the authorization requested will be used by the

applicant in conjunction with the provision of the instructional service

(i) Applications filed in the private radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

21. Sec. 1.1162 is added to read as follows:

§ 1.1162 Adjustments to regulatory fees.

(a) For Fiscal Year 1994, the amounts assessed for regulatory fees are set forth in sections 1.1152 through 1.1155.

(b) For Fiscal Year 1995 and thereafter, the Schedule of Regulatory Fees, contained in sections 1.1152 through 1.1155, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. § 159. Adjustments to the fees established for any category of regulatory fee payment shall include of projected cost increases or decreases of the in volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall

(1) be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest,

(2) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described above,

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph(c)(2), above, changes in the amount appropriated for the performance of the activities described in section (c)(1), above, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of (c)(1), above. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest \$5.00 in the case of fees under \$1,000.00, or to the nearest \$25.00 in the case of fees of \$1,000.00 or more.

22. Sec. 1.1163 is added to read as follows:

§ 1.1163 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not

excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee or installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with private radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(1) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing the application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. See 47 U.S.C. § 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. § 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. § 3717. See 47 C.F.R. § 1.1901-1.1952.

(i) The debt collection processes described above may proceed concurrently with any other sanction in this subsection.

23. Sec. 1.1164 is added to read as follows:

§ 1.1164 Payment by cashier's check for regulatory fees.

(a) Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

24. Sec. 1.1165 is added to read as follows:

§ 1.1165 Waivers, reductions and deferrals of regulatory fees.

(a) The fees established by sections 1.1152 through 1.1155 of this subpart may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(1) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §1.1152 through 1.1155 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(2) Deferrals of fees will be granted for a period of six months following the date that the fee is initially due.

(3) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(4) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251-5835.

25. Sec 1.1166 is added to read as follows:

§ 1.1166 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not toll the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and

applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

* * * * *

Appendix B

Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. § 159(g). Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the various services subject to a fee requirement and the comments of the parties in our proceeding to adopt fees for Fiscal Year 1994 and establish rules to implement the regulatory fee program. The categories and amounts set out in the schedule might, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in the Commission's appropriations, our costs of providing the regulatory services to be recovered by the fee program, and additions, reductions and changes in the services subject to the fee requirement. See 47 U.S.C. §159(b)(2), (3).

1. Private Radio Bureau

2. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. House Report at 17. In addition, because of the relatively small annual fee amounts in the Private Radio Services, applicants for new licenses and reinstatements and for renewal of their current licenses will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year.

3. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate post office box addresses for these actions.

a. Exclusive Use Services

4. Land Mobile. Regulatees covered under this category include those authorized under Part 90 of the Commission's Rules to provide limited access private radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220-222 MHz band and

frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). These land mobile licensees are subject to a regulatory fee of \$16 per license per year. They will pay either a \$80 or \$160 regulatory fee (depending whether their license term is 5 or 10 years).¹

5. Microwave. Private microwave systems, authorized under part 94 of the Commission's Rules, provide telecommunications services between fixed points and are often used to relay data and to control railroad, pipeline and utility equipment. Microwave licensees are required to pay the total regulatory fee for the entire term of their license when filing their initial or renewal application. The annual fee is \$16 for a total of \$80 to be filed with the application.

6. Interactive Video Data Service (IVDS). IVDS is a two-way point-to-multi-point radio service which provides information about products and services, and allows subscribers to respond through their television sets. IVDS is offered on a private carrier basis and is authorized under Part 95, Subpart F of the Commission's Rules. IVDS licensees will be assessed a regulatory fee of \$80 per license to cover each five year license term (\$16 per year).

b. Shared Use Services and Other Authorizations

7. The specific categories of shared-use services listed below are not on the statutory schedule but were listed in the House Report. As discussed above, we propose that emergency and public safety services would be exempted from regulatory fees.

8. Aviation (Aircraft and Ground Stations). The aircraft radio service provides communications between aircraft or from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities. See generally 47 C.F.R. Part 87. Aviation aircraft transceiver stations are subject to a regulatory fee of \$7 per year per station (the total fee of \$70 per station for ten year license term is to be paid at the time a renewal or new application is filed). Aviation ground stations provide communications to aircraft for weather or landing information, or for logistical support to aircraft operations. These stations are subject to a regulatory fee of \$7 per year per license (the total fee of \$35 per license for five year license term is to be paid at the time a renewal or new application is filed).

¹ Some of these services may be reclassified when the Commission implements the recent amendments to section 332 governing the provision of mobile radio services. See n. 11.

9. Marine (Coast and Ship Stations). Marine coast stations are land-based stations in the maritime services, authorized under Part 80 of our rules, which provide communications services to ships and other watercraft in coastal and inland waterways. Coast stations are subject to a \$35 regulatory fee for each license, covering the five year license term (\$7 per year). Marine ship stations, also authorized under Part 80, provide telecommunications between watercraft or between watercraft and shore-based stations. Shipboard radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Ship stations are assessed a \$70 regulatory fee per station, covering the ten year license term (\$7 per year) and is to be paid at the same time a license renewal application or new application is filed.

10. General Mobile Radio Service (GMRS). GMRS, authorized under Part 95 of the Rules, is a land mobile radio service that provides personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications. Each GMRS license is subject to a \$35 regulatory fee, which covers the five year license term (\$7 per year) and is to be paid at the same time a license renewal application or new application is filed.

11. Other Land Mobile. Licensees in the land mobile services not covered in the exclusive use category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis. These services, authorized under Part 90 of the Rules, include radiolocation services, private carrier paging, industrial radio services and land transportation radio services. Regulatory fees will be assessed on a per license basis with the \$35 fee covering the five year license term (\$7 per year) and is to be paid at the same time a license renewal application or new application is filed.

c. Amateur Vanity Call-Signs

12. If Part 97 of the Rules is amended by the Commission to authorize the use of vanity call-signs, amateur radio operators would be able to request a specific call-sign. See Notice of Proposed Rule Making in PR Docket No. 93-305, 9 FCC Rcd 105 (1993). Each amateur licensee with a vanity call-sign will be assessed a regulatory fee of \$7 per year. The total fee of \$70 will cover the ten year license term during which the call sign will be in use. The first 10-year fee must be paid at the time a request for a vanity call-sign(s) is made. If a requested vanity call-sign is not available or otherwise cannot be issued to the requestor, the regulatory fee will be refunded since amateurs are expressly exempt under the statute from regulatory fees, unless they have received their vanity call-sign.

2. Mass Media Bureau

13. The regulatory fees for Mass Media services generally apply to broadcast licensees and permittees and to other regulatees.² We have exempted noncommercial educational broadcasters from regulatory fees.

a. AM Radio Stations

14. Class A. Class A AM radio stations are unlimited time stations operating on a clear channel and designed to render primary and secondary service over an extended service area and at relatively long distances from their transmitters. Class A stations' primary service areas are protected from objectionable interference from other stations on the same and adjacent channels, with secondary service areas protected from interference from other stations on the same channel. The operating power shall not be less than 10 kW nor more than 50 kW. For FY 1994, each licensee of a Class A AM station will be assessed a \$900 annual regulatory fee.³

15. Class B. Class B AM radio stations are unlimited time stations rendering service only over a primary service area. These stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW (or 10 kW for stations that are authorized to operate in the 1605-1705 kHz band). For FY 1994, each licensee of a Class B AM station will be assessed a \$500 annual regulatory fee.

16. Class C. Class C AM radio stations operate on local channels

² We note that some Mass Media services, such as the direct broadcast satellite service ("DBS"), the Instructional Television Fixed Service ("ITFS"), and FM translators and boosters were not specifically listed in the statutory schedule. 26 We believe that ITFS was excluded because of its general educational noncommercial status. We also believe that the omission of DBS and FM translators and boosters was inadvertent and that Congress did not intend to exempt all DBS permittees and licensees and licensees of FM translators and boosters from regulatory fees as these services result in the Commission incurring costs for necessary regulatory functions. Since these services are not on the statutory schedule, we have not assessed fees for these services during the 1994 fiscal year. However, pursuant to our authority in section 9(b)(3) to modify the schedule, we intend to add regulatory fee categories for DBS licenses and for FM translators and boosters to be assessed and collected during the 1995 fiscal year.

Regulatees are to pay the fee to which their facility is subject on the date the fee is due.

and are designed to render service only over a primary service area that may be reduced as a consequence of interference. These stations are authorized to operate at not less than 0.25 kW, nor more than 1 kW. Class C stations that were previously licensed to operate with 0.1 kW may continue to do so under our rules. For FY 1994, each licensee of a Class C AM station will be assessed a \$200 annual regulatory fee.

17. Class D. Class D AM radio stations operate either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. For FY 1994, each licensee of a Class D AM station will be assessed a \$250 annual regulatory fee.

18. AM Construction Permits. For FY 1994, persons holding a construction permit for a any class of a new AM station are subject to a \$100 annual regulatory fee for each outstanding permit. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is due.

b. FM Radio Stations

19. Licensed Stations. FM radio stations must meet the location, power and antenna height requirements for stations designated as Classes C, C1, C2, or B, as set forth in sections 73.205, 73.210 and 73.211 of the Commission's Rules. For FY 1994, each commercial licensee of a Class C, C1, C2 or B FM station will be assessed a \$900 annual regulatory fee per license. FM radio stations meeting the location, power and antenna height requirements for stations designated as Classes A, B1, or C3, as set forth in the Commission's rules, have a smaller coverage area. Thus, for FY 1994, each commercial licensee for a Class A, B1, or C3 FM station will be assessed a \$600 annual regulatory fee per license.

20. FM Construction Permits. Persons holding a construction permit for a any class of a new FM station, except Class D, are subject to a \$500 annual regulatory fee per outstanding permit in FY 1994. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is determined.

c. Television Stations

21. VHF and UHF Commercial Licenses. Commercial VHF and UHF television licensees, including licensees of satellite stations, will be assessed a regulatory fee amount based on the ranking of the station's market. Specifically, for FY 1994 these annual regulatory fees are as follows:

VHF Commercial

Markets 1 through 10	\$18,000.00
Markets 11 through 25	\$16,000.00
Markets 26 through 50	\$12,000.00
Markets 51 through 100	\$8,000.00
Remaining Markets	\$5,000.00

UHF Commercial

Markets 1 through 10	\$14,400.00
Markets 11 through 25	\$12,800.00
Markets 26 through 50	\$9,600.00
Markets 51 through 100	\$6,400.00
Remaining Markets	\$4,000.00

Stations authorized as "satellite" television stations pursuant to note 5 of Section 73.3555 of the Commission's Rules (47 C.F.R. § 73.3555 note 5) will be assessed a fee on the same basis as other full power stations in the same market.

23. Television licensees subject to a regulatory fee above \$12,000 will be automatically eligible to make two equal installment payments.

24. We have decided to rely upon the latest Arbitron market data to determine a television station's market ranking for purposes of assessing regulatory fees. These rankings may be found in the Television and Cable Factbook published by Warren Publishing. Changes in market rankings may affect regulatory fee amounts for the following fiscal year.

25. Television Construction Permits. For FY 1994, persons holding a construction permit for a new VHF television station, in any size market, are subject to a \$4,000 annual regulatory fee per outstanding permit. UHF construction permits for stations in any size market will be assessed a \$3,200 annual regulatory fee. Upon issuance of an operating license to cover the construction permit, this construction permit fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the licensed station's market ranking, as described above.

d. Low Power TV, TV Translator, and TV Booster Stations

26. Under Part 74 of the Commission's Rules, low power UHF and VHF TV stations operate with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility, and may retransmit the programs and signals of a full-

power TV broadcast station, originate programming, and/or operate as a subscription service. TV translator stations are authorized to retransmit the programs and signals of TV broadcast stations without significantly altering the characteristic of the original signal other than its frequency and amplitude, for the purpose of providing TV reception to the general public.

27. TV booster stations are operated by the licensee of a full service TV broadcast station to retransmit the programs and signals of the licensee's station by amplifying and reradiating such signals, without significantly altering the characteristics of the original signal other than its amplitude. For FY 1994, licensees of these secondary television broadcast stations will be assessed a \$135 annual regulatory fee per license.

e. Broadcast Auxiliary Stations

28. Licensees of remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations, authorized under Part 74 of the Commission's Rules, will be assessed a \$25 per license annual regulatory fee for FY 1994. These auxiliary stations are associated with a particular television or radio broadcast station. Hence, those licensees will be required to pay the required regulatory fees for each auxiliary license they hold. Individual users under 47 C.F.R. Subpart D, F and H will similarly have to pay the required regulatory fee for each auxiliary license they hold.

f. International (HF) Broadcast Stations

29. International broadcast stations are licensed to operate on frequencies in the 5,950 khz to 26,100 khz band to provide service to the general public in foreign countries. For FY 1994, each international broadcast licensee will be assessed an annual regulatory fee of \$200 per license.

3. Cable Services Bureau

a. Cable Antenna Relay Service

30. Cable television antenna relay service ("CARS") stations are used to transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by cable television systems. See 47 C.F.R. Part 78. For FY 1994, each CARS licensee will be assessed an annual regulatory fee of \$220 per license.

b. Cable Television Systems

31. For FY 1994, each cable television system, as that term is

defined in section 76.5 of our rules, will be assessed an annual regulatory fee of \$.37 per subscriber.⁴

31. We will allow installment payments for these regulatory fees if the annual fee of a cable television system or a group of commonly owned systems aggregating their regulatory fees exceeds \$18,500.

4. Common Carrier Bureau

32. Most common carrier regulatory fees are based on the size of a regulatee's communication operation as determined by number of stations, subscribers, access lines, or antennas.

a. Mobile Services

33. Cellular and Public Mobile Licensees. Under Part 22 of our rules, common carriers are authorized to offer land-based or air-to-ground mobile telephone or paging services to the public. In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. For FY 1994, each common carrier license authorized under Part 22 will be assessed an annual regulatory fee of \$.06 per subscriber.

34. Personal Communications Services. Licensed personal communications services ("PCS") will consist of a wide variety of commercial or private mobile communications services, including advanced paging, microcellular telephone communications, portable facsimile and other video and data transmission services. See generally, First Report and Order, Gen. Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd 7162 (1993) (narrowband PCS); Second Report and Order, Gen. Docket No. 90-314, 8 FCC Rcd 7700 (1993) (broadband PCS). The statutory Schedule of Regulatory Fees enacted in the 1993 Budget Act established an annual fee of \$60 per 1000 subscribers for PCS licensees. At the same time, the 1993 Budget Act recognized that PCS licenses have not yet been issued. In particular, Congress directed the Commission to conclude its PCS rulemaking proceedings (Gen. Docket No. 90-314 and ET Docket No. 92-100) by February 6, 1994, and to commence the PCS licensing process by May 7, 1994.⁵ In addition, our new PCS service rules provide licensees five years to meet minimum

⁴ The term "subscriber" is defined in section 76.5 of the Commission's Rules. 47 C.F.R. § 76.5.

⁵ Section 6002(d)(2), 1993 Budget Act. See Second Report and Order in Docket 93-252, FCC-94-31, adopted February 3, 1994.

construction requirements.⁶ Accordingly, since it is unlikely that any PCS licensee will have a significant number of subscribers in the immediate future, no regulatory fees will be collected from PCS licensees during the 1994 fiscal year. We intend to begin assessing and collecting regulatory fees for PCS in the 1995 fiscal year.

b. Space Stations

35. Space Stations in Geosynchronous Orbit. Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, are authorized to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1994, entities authorized to operate these space stations in accordance with section 25.120(d), will be assessed an annual regulatory fee of \$65,000 for each operational station in geosynchronous orbit on the date for calculating fees. 47 C.F.R. 25 § 120(d). Payment may be made in two installments.

36. Space Stations in Low-Earth Orbit. Domestic and international non-geostationary satellites, positioned in a low-earth orbit ("LEO"), may be authorized to transmit to satellites and fixed or mobile earth stations. These services include the new non-voice, non-geostationary mobile-satellite service, see Report and Order, CC Docket No. 92-76, 8 FCC Rcd 8450 (1993). Entities authorized to operate LEO systems will be assessed an annual regulatory fee of \$90,000 for each such system. For purposes of assessing regulatory fees, a LEO operator is required to submit its annual regulatory fees in the fiscal year in which it commences operating its first satellite, pursuant to section 25.120(d), even though all the space stations specified in its application or instrument of authorization have not become operational. 47 C.F.R. § 120(d). While it appears unlikely that a LEO system will be operational by the date for calculating fees for the 1994 fiscal year,⁷ should a LEO system be operational on the date for calculating fees during that period, we will require payment of a regulatory fee for such operational systems. The entire annual fee amount will be required. Payment may be made in two installments.

c. Public Fixed Radio Services

37. Domestic Public Fixed Services. Licensees in the Domestic

⁶ See First Report and Order, at ¶ 37; Second Report and Order, at ¶ 134 (petitions for reconsideration pending).

⁷ See Report and Order, at ¶ 18 (a permittee must begin construction of its first two satellites of its system within one year of grant of its construction permit).

Public Fixed Services are authorized to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of the Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Multipoint Distribution Service (single-channel and multichannel) and Digital Electronic Message Service. For FY 1994, these licensees will be assessed an annual regulatory fee of \$55 per call sign.

38. International Public Fixed Service. Licensees in the International Public Fixed Service are authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF, troposcatter systems (other than satellites and satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. See 47 C.F.R. Part 23. For FY 1994, these licensees will be assessed an annual regulatory fee of \$110 per call-sign.

d. Earth Stations

39. VSAT and Equivalent C-Band Antennas. Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1994, entities holding VSAT authorizations will be assessed an annual regulatory fee of \$.06 per antenna. Entities with less than 100 antennas will be subject to a minimum \$6 fee.

40. Mobile Satellite Earth Stations. Under Part 25 of the Rules, mobile satellite service providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1994, licensees will be assessed an annual regulatory fee of \$.06 per antenna. Entities with fewer than 100 antennas will be subject to a minimum \$6 fee.

41. Earth Station Antennas Less Than 9 Meters. Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are less than 9 meters in diameter are private and public carriers that provide telephone, television, data, and other forms of communications. This category includes antennas used to transmit and receive, transmit only, or receive only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1994, we will assess an annual regulatory fee of \$.06 per antenna. Entities with less than 100 antennas will be subject to

a minimum \$6 fee.

42. Earth Station Antennas 9 Meters or Greater. This category covers fixed-satellite earth station antennas authorized under Part 25 that are equal to or greater than 9 meters in diameter. These earth stations are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking, and control (TT&C) earth stations equal to or greater than 9 meters in diameter. For FY 1994, persons authorized to operate transmit/receive and transmit-only antennas will be assessed an annual regulatory fee of \$85 per meter; receive-only antennas will be assessed a regulatory fee of \$55 per meter. All measurements will be to the tenth of a meter.

e. Interexchange and Local Exchange Carriers

43. For FY 1994, interexchange carriers (long distance telephone companies) ("IXCs") will be assessed an annual regulatory fee of \$.06 per presubscribed line. Similarly, local exchange carriers (local telephone operating companies) ("LECs") will be assessed an annual regulatory fee of \$.06 per access line. A holding company may combine the fee payments of its operating companies and pay their fees for a particular service in a single combined payment or by installments, if the aggregate of their fees in a single service qualifies the holding company to make installment payments. For IXCs we have identified regulatory fee payment amounts greater than \$500,000 as large. For LECs, we have identified \$700,000 as a large amount. Thus, we will to permit IXCs whose annual regulatory fee exceed \$500,000 and LECs whose fee payments exceed \$700,000 to make installment payments.

f. Competitive Access Providers

44. Competitive access providers ("CAPs") are companies, other than the traditional local telephone companies, that provide interstate access services to long distance carriers and other companies. For FY 1994, each CAP will be assessed an annual regulatory fee of \$.06 per subscriber.

g. International Bearer Circuits

45. The Schedule of Regulatory Fees provides that the fee for international bearer circuits is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. The fee is based upon active 64

KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of Equivalent 64 KB Circuits
36	630
24	288
18	240

Appendix C

Formal Comments¹ were filed by:

Government Agencies

United States Coast Guard
Small Business Administration

Private Radio Parties

Association of American Railroads
Association of Public-Safety Communications Officials-
International, Inc.
American Radio Relay League, Incorporated
Dennis C. Brown and Robert H. Schwaninger
Forest Industries Telecommunications
Industrial Telecommunications Association, Inc.
National Association of Business and Educational Radio,
Inc.
State of Nevada, Division of Wildlife
National Marine Electronics Association
National Marine Manufacturers
Personal Communications Industry Association
Personal Radio Steering Group, Inc.
Radio Technical Commission for Maritime Services
Ram Mobile Data USA
Utilities Telecommunications Council

Mass Media Parties

Association of America's Public Television Stations
Carnegie-Mellon Student Government Corporation
De La Hunt Broadcasting Corporation
Fireweed Communications Corp.
KBS License, L.P.
National Association of Broadcasters
New Jersey Broadcasters Association
Society of Broadcast Engineers
Joint Filing by Named State Broadcasters Associations

Cable Services Parties

Joint Filing by Blade Communications, Inc., Cablevision
Industries Corp, Crown Media, Inc., Multivision Cable TV
Corp., Parcable, Inc., Providence Journal Company, Sammons
Communications, Inc., and Star Cable Associates
Cable Services, Inc.
Cable Telecommunications Association
Continental Cablevision, Inc.
Leonard Communications

¹ Numerous informal comments were also filed. Although the informal commenters have not been listed, full consideration has been given to their filings.

Nationwide Communications, Inc.
National Cable Television Association
Pepper & Corrazzini
Small Cable Business Association

Common Carrier Parties

Allnet Communications Services, Inc.
American Telephone and Telegraph Company
Ameritech
AMSC Subsidiary Corporation
Bell Atlantic
BellSouth Telecommunications, Inc.
Claircom Communications Group
Cellular Communications of Puerto Rico
Cellular Telecommunications Industry Association
Comsat General Corporation
GE American Communications, Inc.
GTE Service Corporation
In-Flight Phone Corporation
MCI Telecommunications Corporation
National Exchange Carriers Association, Inc.
National Telephone Cooperative Association
NYNEX Corporation
Orbital Communications Corporation
PanAmSat, L.P.
Puerto Rico Telephone Company
Southwestern Bell Corporation
Sprint Corporation

Formal Reply Comments were filed by:

Ameritech
GTE Service Corporation
McCaw Cellular Communications, Inc.
MCI Telecommunications Corporation
National Telephone Cooperative Association
Puerto Rico Telephone Company
RAM Mobile Data USA
Southwestern Bell Corporation
Sprint Corporation
STARSYS Global Positioning, Inc.
Wireless Cable Association International, Inc.
Wiltel, Inc.
Young & Jatlow

Separate Statement of Commissioner James H. Quello

**Implementation of Section 9 of the Communications Act
Assessment and Collection of Regulatory Fees
for the 1994 Fiscal Year**

I am writing separately to express my concern with two issues in this item: the regulatory fee that will be assessed for television satellite stations, and the fee for marine radios. In both instances, the fees set forth in this item are excessive in light of the facilities involved. Yet I am told that Congress has spoken, and that, as a legal matter, our hands are tied with respect to fees imposed for fiscal year 1994. However, I will be looking very carefully next year, when the Commission has some discretion to modify fees, at making cuts that are fair and logical.

With respect to television satellite stations, in this item we indicate that the fee should be no greater than the fee for the parent station, and that we will entertain petitions along these lines. We also establish a waiver standard for situations in which the payment of a fee for a satellite station (or stations) would cause a diminishment of a licensee's ability to continue to serve the public. Nonetheless, I am concerned about the implementation of a significant fee against satellite stations owned by small broadcasters in rural areas to provide coverage to members of the public that typically have access to fewer over-the-air signals. While in some respects this agency may treat satellites as full service stations, I find it significant that we do not count satellite stations for purposes of determining compliance with the multiple ownership rules. Moreover, a satellite station is allowed to carry as much as 95% of the parent station's programming. Finally, as a practical matter, these satellites frequently operate effectively as translator stations. Thus, to impose the same fee for satellites as for full-service commercial stations seems anomolous.

I am also concerned about the possible adverse effects of raising our regulatory fees for marine radios used by recreational boaters. The problem is that the fees for the license term for these radios will exceed not only the cost of the average marine radio - thus discouraging recreational boaters from even buying them - but also the amount of the forfeiture the FCC would likely impose for a first-time offense for use of a marine radio without a license. Human nature being what it is, I cannot help but agree with the Coast Guard and other marine experts who fear that under these circumstances a substantial number of boaters may choose either to forego installing a radio or getting a license.

One of the principal objectives of the Communications Act is to promote public safety through the use of radio, and the statute does allow us to waive a fee requirement for "narrow" and "compelling" circumstances. To me, the possibility that marine safety could be compromised by literal compliance with the statute would constitute such a "narrow" or "compelling" circumstance.

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